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Vol. III

TRANSCRIPT OF RECORD

(Pages 681 to 886)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 6

AMERICAN POWER & LIGHT COMPANY,
PETITIONER,

vs.

SECURITIES AND EXCHANGE COMMISSION

No. 7

ELECTRIC POWER & LIGHT CORPORATION,
PETITIONER,

vs.

SECURITIES AND EXCHANGE COMMISSION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 13, 1944.

CERTIORARI GRANTED MAY 28, 1945.

United States Circuit Court of Appeals

FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1942.

No. 3823.

AMERICAN POWER & LIGHT COMPANY,
Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

No. 3824.

ELECTRIC POWER & LIGHT CORPORATION *v.* SAME.

Supplemental Portions of
TRANSCRIPT OF RECORD

Pages 681 to 866, inclusive.

TABLE OF CONTENTS

	Page
Minutes of Meeting of Bond and Share Executive Committee Held August 5, 1909. Commission's Exhibit 135	681
Testimony of L. B. Wiegers	684
Minutes of Meeting of Board of Directors of Bond and Share Held March 11, 1925. Commission's Exhibit 494	712
Testimony of Joe H. Gill	719
Testimony of L. B. Wiegers	729
Testimony of Howard L. Aller	742
Testimony of Howard L. Aller	761
Testimony of Joe H. Gill	791
Testimony of A. D. Root	804
Letter to the Commission from D. W. Jack, October 2, 1941. Commission's Exhibit 1010	809
Letter to the Commission from Floyd B. Odlum, November 24, 1941. Commission's Exhibit 1010A	811
Testimony of Edgar H. Dixon	812
Memorandum dated April 18, 1927, from Samuel W. Murphy, now President of Electric Bond and Share Company, but then a member of its Legal Department, to F. A. Reid, the company's general attorney, re Pennsylvania reorganization. Commission's Exhibit 389	818
First service contract between Bond and Share and American (dated May 1, 1917). Commission's Exhibit 140	824
First service contract between Bond and Share and Electric. Exhibit D of Commission's Exhibit 507	836
Letter dated January 13, 1928, from Frank Silliman, Jr., Vice-President of Electric Bond and Share Company, to Guy W. Talbot, President of Northwestern Electric Company. Commission's Exhibit 174	861
Letter dated May 1, 1928, from J. F. MacLane to Ralph B. Feagin. Commission's Exhibit 181	863

SUPPLEMENTAL PORTIONS OF TRANSCRIPT OF RECORD

COMMISSION'S EXHIBIT 135

A meeting of the Executive Committee of the ELECTRIC BOND AND SHARE COMPANY was held on Thursday, the 5th day of August, 1909, at 30 Church Street, New York City, at 3:45 P. M.

Present: Messrs. C. A. Coffin
Marsden J. Perry
A. M. Young
S. Z. Mitchell

The minutes of the previous meeting were read and approved.

The matter of purchasing the Wichita Gas & Electric properties and forming a holding company to take over said properties, and also the Pittsburg, Kansas, and Astoria, Oregon, properties, was discussed at some length.

Mr. Mitchell stated: That the Electric Bond and Share Company had already spent for the acquisition of the Pittsburgh property about $400,000, and approximately $66,000.00 for the western holdings of the Astoria Electric Company stock, and that it will be necessary to advance additional money for improvements to the Astoria and Pittsburg properties. The contract for the purchase of the Wichita properties will call for the payment of approximately $1,100,000 in cash on September 1, 1909, and if the properties are purchased it will be necessary shortly thereafter to spend approximately $200,000 for improvements thereof. Mr. Mitchell stated that William P. Bonbright & Company had signified their willingness to join in a Syndicate with this Company for the purpose of raising $2,500,000 to be used for financing the purchase of the Astoria, Wichita and Pittsburg properties.

On motion, duly seconded, it was voted as follows:

In order to minimize the risks and commitments of this Company in connection with the above, the officers were authorized as follows:

1. To form a syndicate to provide $2,500,000 in cash to be used:

(a) in the acquisition from the Electric Bond and Share Company of (1) the stock of the Astoria Electric Company at par, (2) the stocks and other securities of the Wichita and Pittsburg properties at cost, and (3) to reimburse the Electric Bond and Share Company for expenses incurred by it for and in connection with the acquisition and management of the aforesaid properties in behalf of a new corporation hereinafter referred to, together with interest on all disbursements made by the Electric Bond and Share Company for and in connection with the transaction as a whole including any expenses or liabilities incurred by the Electric Bond and Share Company as manager of the syndicate; and

(b) for organizing the new corporation hereinafter referred to, the issuance of its securities and providing said company with working capital.

2. To sell to William P. Bonbright & Company participation in said syndicate to the extent of not exceeding a two-fifths interest therein, with the understanding, however, that Bonbright & Company shall give to employees of this Company and to such other persons or banks as the officers of this Company deem it desirable to interest in the project a reasonable proportion of their two-fifths allotment in the syndicate. The Electric Bond and Share Company will itself participate in said syndicate for the remaining three-fifths interest upon the same basis as the other participators in said syndicate, except that all the members of the syndicate other than Electric Bond and Share Company are to pay to it in cash five percent. of their respective participations in the syndicate, said five per cent. payment to be made as an arbitrary allowance to Electric Bond and Share Company for its general expenses, risk and profit. Electric Bond and Share Company shall be the sole manager of the syndicate, but shall make no charge for services as such manager.

3. As manager of the syndicate, to form a holding company under the name of American Power & Light Company, or such other name as may be determined upon, under the laws of such state as counsel may advise, with an authorized capital consisting of $10,000,000 common stock and $5,000,000 preferred stock, which Company will issue $2,500,000 of preferred stock and $5,500,000 of common stock for the securities of the Astoria, Pittsburg and Wichita Companies and for working capital.

4. As manager of the syndicate aforesaid to sell the preferred and common stock of the proposed holding company in blocks of such amounts of preferred and common stock as they may deem necessary or expedient, provided such blocks produce in the aggregate not less than $2,500,000 cash, and further to pay such commissions in stock or cash, or both, for account of the syndicate as they may deem expedient, and also to purchase at not exceeding $15.00 per share for account of this Company all or any part of the common stock commissions which may be paid to dealers or others for placing the blocks of the holding company preferred and common stock.

Upon motion, duly seconded, it was

RESOLVED that the officers of this Company be and they hereby are authorized to purchase the Wichita Gas & Electric properties upon the basis of the option dated July 14, 1909, signed by Messrs. Randle, Davidson and Wilbur.

* * * * * * *

(Signed) H. M. FRANCIS, *Secretary.*

March 3, 1941

L. B. WIEGERS, Secretary and Treasurer of Electric Bond and Share Company.

CROSS-EXAMINATION

[7707] Q. I should like to discuss with you this morning Electric Bond and Share Company's activity in connection with the American Power & Light Company. Will you kindly tell us the earliest date at which you find from the record at your disposal that Electric Bond and Share Company took any action in connection with American Power & Light Company or with any of the properties which thereafter went into American Power & Light Company?

A. The first property which subsequently went into the American Power & Light Company and in which Electric Bond and [7708] Share Company had an interest was the Astoria Electric Company, of which a block of 967 shares were acquired in January, 1906.

Q. How many shares did you say that was?

A. My recollection is that it was 967 shares.

Q. Those were common shares?

A. They were.

Q. And were they received by Electric Bond and Share Company at the time of its organization from General Electric Company?

A. No; they were received in exchange for other securities which were acquired at the formation of Electric Bond and Share Company in 1905.

Q. With whom did they make this exchange? From whom had they acquired these shares of Astoria Electric Company?

A. In 1905 among the securities acquired by Electric Bond and Share Company from General Electric Company were 3100 shares of the Ateliers Thomson Houston Company which were in January, 1906, surrendered to the General Electric Company in exchange for other securities and

some cash, among which were the 967 shares of Astoria Electric Company.

Q. Were the securities of any of the Kansas properties that were subsequently conveyed to American Power & Light Company included in the original group received from General Electric Company,—or as the result of any exchanges with [7709] General Electric Company?

A. Not to my recollection.

Q. The original group of Astoria Electric Company shares was subsequently increased, was it not, by purchases on the part of the Electric Bond and Share Company?

A. Subsequently increased?

Q. Yes.

A. Yes.

Q. At the formation of American Power & Light Company in 1909, Electric Bond and Share Company owned 3,000 shares of Astoria Electric Company; isn't that so?

A. That is correct.

Q. Now, will you tell us how it acquired the additional shares and what the cost of the entire block was to Electric Bond and Share Company?

A. All of the additional shares of Astoria Electric Company were acquired for cash. There were 2033 additional shares acquired upon the cash expenditure of $172,385.

Q. What were the original 967 shares entered on the books of Electric Bond and Share Company at?

A. $58,020.

Q. Is it correct to say then that the total cost to Electric Bond and Share Company of the 3,000 shares of Astoria Electric Company which were conveyed to American Power & Light [7710] Company in 1909 had a total cost to Electric Bond and Share Company of $230,405?

A. That was the cost to Electric Bond and Share.

Q. Had Electric Bond and Share Company received any income from the Astoria Company during the period that it held these shares, in the form of dividends, interest, service fees, or otherwise?

A. I just do not recall whether or not there were any dividends, interest or service fees collected.

Q. When do you find that Electric Bond and Share Company made its first acquisition of properties in Kansas?

A. The record indicates that the first payment made in connection with acquisition of Kansas properties was on April 29, 1909.

Q. And what was acquired at that time?

A. Stocks and bonds of the Home Light, Heat & Power Company.

Q. Did it at that time acquire 4,000 shares of capital stock, $200,000 principal amount of 6 percent bonds and a $38,000 note receivable of the Home Light, Heat & Power Company of Kansas?

A. I don't think at that time they received $38,000 in notes receivable of Kansas. I think at that time they just acquired the $200,000 principal amount of notes, and 4,000 shares [7711] of common stock.

Q. And what did it pay for that initial investment?

A. The initial payment was $390,000. However, there were additional costs applicable to the securities acquired.

Q. What costs were those?

A. Legal expenses and expenses in securing options, so that I have here a total of the costs transferred to the syndicate of $412,520.68.

Q. And what amount had Electric Bond and Share Company entered these properties in its Investment Account? At $412,520 or $390,000?

A. The payment in connection with the actual purchase of the securities was $390,000, but there was added to that $390,000 on the books of Bond and Share these other costs.

Q. Then did the properties stand on the books of Bond and Share at $412,520 or was $22,520 subsequently added as a fair allocation of expenses when the properties were sold?

A. No. The original entry of April 29th was the $390,000, and these other items were added to the cost of the se-

curities of the Home Light, Heat & Power Company during May, June, August and November of 1909.

Q. You say these additional items comprised of legal expenses and what else?

A. Expenses for securing options.

[7712] Q. Options on what?

A. The options to purchase the securities of the Home Light, Heat & Power Company.

Q. How much did those expenses amount to?

A. $1,992.50.

Q. Can you give us an itemization of that $22,520 which was added subsequent to the purchase of these properties?

A. The record shows a payment to C. M. Maxwell on account of agreement with M. C. Kelly dated January 19, 1909, $2,330.40; payment to J. D. Mortimer, transfer of draft by S. Z. Mitchell, $5,000; in June, payment to McCune, Harding, Brown and Murphy of $3,149.40.

As I have stated before, the expenses for securing the options to purchase the securities, $1,992.50. And further payment to M. C. Kelly on account of the agreement with C. M. Maxwell, $3,145.15; payment in August to Maxwell and Power for $5,000; payment in November to M. C. Kelly of $1,903.23.

Those items, together with the $390,000, make up the $412,520.68.

Q. Did you mention an item there as having been paid to S. Z. Mitchell?

A. No. The payment was to J. D. Mortimer. It says here "transfer charges of draft by S. Z. Mitchell."

Q. Is there any indication as to when the $38,000 note of [7713] the Home Light, Heat & Power Company was acquired?

A. I do not have the ready reference on that, Mr. Berman. It may be assumed that the $38,000 note was acquired in connection with the entire transaction, and that no additional payment was made for the acquisition of the $38,000 note, subject to verification from the record.

Q. Similarly, I take it we will assume that the note is included in the total cost of $412,520.68?

A. Subsequent to verification, yes.

Q. Were there any other expenses incurred in connection with those properties and charged to them on the books of Electric Bond and Share Company prior to their transfer?

A. Well, there were certain investigation accounts investigating properties that were subsequently added to the cost of things that were sold by Electric Bond and Share Company to the American Power & Light syndicate.

Q. What sort of investigations were those? Were they investigations made prior to the purchase of the properties, or were they investigations made subsequent to the purchase of the properties, or were they investigations that were not actually made but merely charged as such?

A. I cannot give you from what record I have here the specific dates during which these investigations were conducted, but there were accounting and engineering investigations made in [7714] connection with the purchase of the properties.

Q. And how much was charged to these properties for such investigations?

A. Again I cannot pick the details out of the information that I have here as to the amount applicable to the specific property.

Q. Subsequent to April 29, 1909, when was the next acquisition of properties in Kansas made by Electric Bond and Share Company?

A. On August 28, 1909, payment was made to C. H. Randle, J. O. Davidson and J. B. Wilbur in accordance with the agreement dated May 29, 1909, and the amount of the payment was $750,000. There was, however, additional payment in accordance with this same contract on September 1st of $293,500.

Q. September 1st, 1909?

A. Yes, sir.

Q. Of how much and for what properties?

A. $293,500. These payments were made in connec-

tion with the purchase of the Wichita properties which were The Edison Light & Power Company, the United States Gas Company and the United Gas Appliance Company. They were additional charges in the Purchase Account during September of $25,000 which represented the net amount of advances made to the United Gas Company, and a payment to H. P. Wright for services in accordance with the letter agreement [7715] dated May 29, 1909.

Q. In what amount?

A. In the amount of $15,000. So that the aggregate charges in the Wichita Purchase Account were $1,061,000.

Q. Is that the H. P. Wright who subsequently became a director of American Power & Light Company?

A. It may be assumed that it was, subject to correction.

Q. Can you tell us what purpose this payment was made to Mr. Wright for?

A. The record indicates that it was a payment for services in accordance with the letter agreement of May 29, 1909.

Q. Did you say that a contract for the purchase of the Wichita properties pursuant to which the payment of August 28 and September 1 were made, that that contract was entered into on May 29, 1909?

A. That is correct.

Q. And do you have a copy of that contract between the Electric Bond and Share Company and the vendors of this property?

A. I have, yes.

Q. Can you furnish us with a copy?

A. Yes.

Q. Will you likewise furnish us with a copy of the letter of May 29, 1909 from or to H. P. Wright to which you referred a few minutes ago?

[7716] A. I will endeavor to get a copy of that for you, yes.

Q. Prior to the payment of $750,000 by Electric Bond and Share Company which was made on August 28, 1909, did Electric Bond and Share Company take some action with

respect to the formation of American Power & Light Company?

A. Yes, I believe so. I believe that such action was taken in the early part of August, 1909.

Q. And as part of the plan which was put into operation, did Electric Bond and Share Company enter into a syndicate agreement with William Bonbright and Company?

A. The minutes of the Board of Directors of Electric Bond and Share Company or of the Executive Committee of Bond and Share Company indicate that there was an agreement between Bond and Share Company and Bonbright and Company for the formation of this syndicate.

Q. Do you have a copy of the syndicate agreement which was entered into between Bonbright and Electric Bond and Share Company?

A. No, I do not.

Q. Is there a copy of this agreement to be found in the files of Electric Bond and Share Company or anyone else?

A. I have never found a copy of that agreement.

Q. You have looked for it?

A. Yes, I have.

[7717] Q. Have you inquired of Bonbright and Company whether a copy of that agreement is to be found in their files?

A. No, I have not.

Q. Would you be good enough to make inquiry of Bonbright and Company as to whether they are able to locate a copy of this syndicate agreement in their files, Mr. Wiegers, and advise us if such a copy can be obtained?

A. If I can do that, I will be glad to, Mr. Berman. However, I am inclined to think that the search for any such documents perhaps ends in the records that are under my control.

Q. I thought you might be interested to obtain a copy of this document for your own records. If you have any hesitancy about the matter, we will be glad to make inquiry of Bonbright and Company ourselves, if you prefer it that way.

A. I will endeavor to make inquiry of Bonbright and Company.

Q. Electric Bond and Share Company was the syndicate manager, was it not?

A. Yes, it was.

Q. Do you have at this time a transcript of the syndicate account?

A. Yes, I do.

Q. May I see it?

A. (Handing paper to counsel.)

[7718] Q. It is a fact, is it not, that this syndicate acquired from Electric Bond and Share Company, its holdings of securities in the Astoria Electric Company, in the Home Light, Heat & Power Company of Kansas, and of the securities acquired by Bond and Share pursuant to a contract in the Wichita properties?

A. That is correct.

Q. What was the total amount paid by the syndicate to Electric Bond and Share Company for the acquisition of these securities?

A. Off the record.

(Discussion off the record.)

MR. BERMAN: Permit me to introduce as Commission's Exhibit 142 this transcript of the syndicate account handed to me by Mr. Wiegers.

MR. MACLANE: No objection.

THE EXAMINER: Admitted.

(Commission's Exhibit 142 received in evidence.)

By MR. BERMAN:

Q. Do I understand you to say, Mr. Wiegers, that the amount received by Electric Bond and Share Company from the syndicate would be the total of the items listed at the head of the right-hand column on the first page of Commission's Exhibit 142?

A. No, because Bond and Share in addition to these property [7719] accounts were reimbursed for these investigation accounts which are shown later on.

Q. You mean it received the amounts shown at the head of this column, and then it received certain additional amounts as well?

A. It received reimbursements for investigation accounts and others afterwards from the syndicate.

Q. Are the investigation accounts listed anywhere on this transcript?

A. Yes, they are all on this transcript.

Q. Will you give me the total of the sums paid by the syndicate into Electric Bond and Share Company?

A. The total payments to the syndicate account aggregated $2,500,000.

Q. Of that $2,500,000, what part was paid to Electric Bond and Share Company by the syndicate?

A. I don't know that your question is clear to me.

Q. To whom did the syndicate pay the $2,500,000?

A. The $2,500,000 was received by Electric Bond and Share Company.

Q. And did Electric Bond and Share Company actually receive from the syndicate members $2,500,000 in cash, or was this amount to which the syndicate members were committed, in an adjustment which was made on the books of the syndicate in closing out the [7720] account?

A. This is the amount to which the syndicate participants were committed to the syndicate.

Q. Was this amount actually received in cash from the syndicate participants by Electric Bond and Share Company?

A. It was received in cash from the subscribers to the preferred stock of American Power & Light Company.

Q. In other words, these sums were realized by Electric Bond and Share Company subsequent to the formation of American Power & Light Company when the preferred stock was issued, the purchase price paid by the purchasers of that preferred stock, is that correct?

A. That is correct.

Q. So that, is it true, the syndicate participants did not actually, at the date of the syndicate formation or shortly thereafter, pay over to Electric Bond and Share Company $2,500,000?

A. Well, the syndicate participants did actually pay over to Electric Bond and Share Company $1,000,000.

Q. Did they actually pay that sum over to Electric Bond and Share Company in cash?

A. Yes, sir.

Q. And when do the books and records of Electric Bond and Share Company show that they received $1,000,000 in cash from the syndicate participants?

[7721] A. During August, September, October and November 1909.

Q. Do you have an itemization of those receipts?

A. I just have a penciled notation here of the amounts that were received by months.

Q. And from whom received?

A. No, I do not have the details here from whom received.

Q. Can you obtain for us the details of the receipt of that $1,000,000, from whom received, and in what way?

A. Yes, I can.

Q. How did Electric Bond and Share Company treat the $2,500,000 received from the syndicate on its books?

A. As a credit against the charges made in the syndicate account, the charges aggregating $2,500,000, and it was credited with the same amount.

Q. The contract between the Electric Bond and Share Company and the syndicate provided that Electric Bond and Share Company was to turn over the various properties concerned at Electric Bond and Share Company's costs, plus disbursements and interest thereon, with the exception of the Astoria Electric Company securities which were to be turned over at the flat amount of $300,000; isn't that so?

A. I think generally that is so. However, the $300,000 was part of the $2,500,000 and not in addition.

Q. Yes, I so understand. Now, at the formation of American [7722] Power & Light Company, in addition to conveying these various securities, how much did Electric Bond and Share Company transfer as cash?

A. At the formation of American Power & Light Company, it was $500,000.

Q. And at that time that represented the entire amount of cash transferred, is that right?

A. At that time, yes, that is correct.

Q. So that of the $2,500,000 received by Electric Bond and Share Company, $2,000,000 was applicable to the various securities transferred by Electric Bond and Share Company; is that not so?

A. Not exactly, because subsequently there were other amounts of cash that were paid over to American Power & Light Company.

Q. What items are you referring to now?

A. Under date of April 4, 1911, $50,000; on April 27, 1912, $30,223.66.

Q. These did not occur until 1911 or 1912. What did they represent, Mr. Wiegers?

A. The record says that these disbursements, both of them, were distribution on account of requirements of American Power & Light Company in accordance with the understanding between Electric Bond and Share Company and American Power & Light Company, also per authority of the Executive Committee.

[7723] Q. That would be the Executive Committee of Electric Bond and Share Company?

A. Yes.

Q. And what do you find in the minutes of the Executive Committee relating to this item?

A. I am sorry, I did not look it up specifically.

Q. Will you find for us the minute of the meetings of the Executive Committee, and whatever minutes of the Board of Directors relate to these payments, and produce copies of such minutes for us?

A. I will endeavor to do so, yes.

Q. Then the total cash transferred by Electric Bond and Share Company in connection with the organization of American Power & Light Company including the two items subsequently transferred in 1911 and 1912 aggregated $580,223.66, is that correct, Mr. Wiegers?

A. That is correct.

Q. If that be subtracted from the $2,500,000 received by Electric Bond and Share Company, what does that leave?

A. $1,919,776.34.

Q. And what was the total amount of expenses and disbursements claimed by Electric Bond and Share Company to have been incurred in connection with the various properties transferred to the syndicate?

[7724] A. I do not have the specific tabulation for that. I can add them all up.

Q. All such items are enumerated in this tabulation, are they not?

A. All the charges against the syndicate are enumerated in this exhibit, yes.

Q. And the disbursements and the expenses are part of the charges against the syndicate, are they not?

A. That is correct.

Q. Will you kindly total for us the items which represent disbursements and expenses charged to the syndicate?

A. $146,255.66.

Q. Those items were supposed to have represented actual disbursements and expenses incurred by Electric Bond and Share Company, with interest thereon; is that correct?

A. And charged to the syndicate.

Q. Included in that sum is no element of profit to Electric Bond and Share Company other than the interest received, is that so?

A. I believe that is so.

Q. If we deduct that $146,255.66 from the $1,919,776.34 balance, at what sum do we arrive?

A. $1,773,520.68.

Q. If we aggregate the costs which you stated Electric Bond [7725] and Share Company had incurred in the acquisition of Astoria, Home Light, Heat & Power Company and Wichita properties, what sum do we find they total?

A. $1,703,925.68.

Q. What are the component parts of that figure, Mr. Wiegers?

A. The Astoria Electric Company, $230,405; the Home Light, Heat & Power Company, $412,520.68; the Wichita properties, $1,061,000.

Q. If that sum be deducted in turn from our last previous balance, what do we find to remain?

A. $69,595.

Q. Did that sum of $69,595 represent net profit to Electric Bond and Share Company on the securities conveyed to the syndicate?

A. It represents the difference between the cost to Bond and Share on the 3,000 shares of Astoria Electric Company and the amount which was charged by Bond and Share to the syndicate.

Q. You have included in your aggregate total cost to Electric Bond and Share Company, have you not, Mr. Wiegers, certain amounts for expenses or investigations in connection with the Home Light, Heat & Power Company and the United Gas Company and other Wichita properties?

[7726] A. That is correct.

Q. On the other hand, we have already allowed, have we not, for a total of $146,255.66 for disbursements and expenses? Are there any duplications in these figures?

A. No, sir.

Q. That is to say, the $146,255.66 were disbursements and expenses in addition to the investigations made in connection with these properties?

A. No, the investigational expenses paid in connection with these properties are part of the $146,000.

Q. They are?

A. They are.

Q. Well, actually, as I recall, the cost of the Home Light, Heat & Power Company was only $390,000, and you

arrive at the $412,520 figure,—$22,520 was added for interest and legal and investigation expenses, was it not?

A. No, I did not say that they were investigation expenses. I said that they were additional expenditures in connection with the acquisition. I might make it clear that they were not investigation expenses as we have been considering investigation expenses.

Q. How can we be certain that that sum of $22,000 includes none of the items of expense which were subsequently received by Electric Bond and Share Company as part of that $146,255 figure?

[7727] A. Off the record.

(Discussion off the record.)

By MR. BERMAN:

Q. Then as I understand you, Mr. Wiegers, you are certain that there was no duplication in these items of expenses received as part of that $146,255 figure, that they were completely different from the expenses included in the $412,520 figure?

A. They were entirely separate.

Q. The profit of the $69,595 realized by Electric Bond and Share Company in connection with the Astoria securities was entered in the Profit Account of Electric Bond and Share Company?

A. $55,090 was recorded as profit on the sale to the syndicate. $14,505 net represents the result of the annual reappraisal of investments. The first item in 1906 was a revaluation downward of $9,670, and in 1908 a revaluation upward of $24,175, or a net of $14,505 revaluation upward.

Q. Then the $14,505 would have been credited to surplus, would it not?

A. Yes, that is my recollection.

Q. For revaluation of the portfolio?

A. Yes.

Q. So that in fact the full sum of $69,595 was carried to Surplus Account?

A. That is correct.

[7728] Q. I believe you told us in the course of your direct testimony, Mr. Wiegers, that it was a practice of Electric Bond and Share Company to revalue its portfolio each year, a practice which was discontinued about 1923, is that correct?

A. That is my recollection.

Q. And that practice was carried out by arbitrarily ascribing certain values to the securities carried in the portfolio at the close of each year?

A. No. The Board appointed a committee of directors to make a recommendation for a reappraisal of all of the assets of the company annually. My recollection from having seen the reports of these committees is that substantially all of the committee were members of the Board who were not associated with the Bond and Share Company.

Q. And on the basis of this report, the Board determined that a revaluation should be made?

A. That is correct.

Q. Was 1923 the last year in which this practice was carried on?

A. That is my recollection; that is the best of my recollection.

Q. Now, will you tell us what the syndicate received from the newly formed American Power & Light Company in return for conveying to the American Power & Light Company the securities [7729] acuired by it from Electric Bond and Share Company and the cash?

A. 25,000 shares of preferred stock and 54,978 shares of common stock.

Q. How many shares of preferred did you say?

A. 25,000 shares.

Q. And 55,000 shares of common?

A. 54,978. There were 22 shares for qualifying director shares.

Q. Who acquired those 22 shares?

A. Electric Bond and Share Company.

Q. Acquired them by assignment from the incorporators?

A. This record does not indicate whether or not it was by assignment by those incorporators.

Q. So that actually 55,000 shares of common were issued and found its way to the syndicate members?

A. *That is correct. To the syndicate manager.*

Q. To the syndicate manager, yes. The syndicate made arrangements, did it not, to market certain of the preferred stock of American Power & Light Company and to give with the preferred stock so marketed a certain number of shares of common as bonus; is that not a fact?

A. The syndicate received subscriptions for 25,000 shares of preferred stock with which was issued 20,000 shares of common [7730] stock for cash of $2,500,000.

Q. That is on the basis of 4/5ths of a share of common for each share of preferred stock?

A. That is correct.

Q. Are you aware of the fact that certain of these shares were offered and sold in Great Britain?

A. I have heard that is true, yes.

Q. And are you aware of the fact that the British offer was on the basis of one share of preferred stock plus a bonus of one-half of one share of the common?

A. I believe that is what the circular said, yes.

Q. Can you tell us who received or who retained the difference between the 3/10ths of a share based on what the syndicate received and the British public received?

A. No, I cannot. The records indicate that each subscriber who subscribed to the preferred stock was given common stock at the rate of 8 shares of common stock for each 10 shares of preferred stock.

Q. Can you tell us how many shares were disposed of in Great Britain at the time of the initial offer?

A. No, I cannot.

Q. Do you have a record of the syndicate account showing receipts from the marketing of the securities and from whom received?

[7731] A. Our records indicate from whom the cash was received upon the sale of the $2,500,000 par value of pre-

ferred stock and the $2,000,000 par value of common stock. I do not have that record here at the hearing this morning with me.

Q. Will you kindly forward to us an itemization of the amounts received showing from whom received as taken from the records of the company?

A. Yes, I will.

Q. Of the remaining shares in the hands of the syndicate, which aggregated 35,000 shares of common, Mr. Wiegers, did the syndicate manager distribute certain of these shares to brokers and dealers for services rendered in connection with the distribution of the securities?

A. Yes, there were 7981 shares so distributed.

Q. Do you have a list of the dealers and brokers to whom this distribution was made?

A. The record will indicate it; I do not have it here.

Q. Will you kindly furnish us that information?

A. I will.

Q. With how many shares of common stock did that leave the syndicate?

A. There were remaining 27,019 shares of common stock.

Q. Those were $100 par value shares, were they not?

A. Yes, they were.

Q. Electric Bond and Share Company was a 60-percent [7732] participant in that syndicate?

A. That is correct.

Q. And how many shares did it receive as its participation?

A. 16,211.

Q. What was done with the remaining 10,808 shares?

A. Those shares were distributed to the other original syndicate participants.

Q. In the contract or agreement between Bonbright and Electric Bond and Share Company, was it not provided that Bonbright and Company would agree to accord participations to various officers and employees of Electric Bond and Share Company and various bankers and others

whom Bond and Share deemed useful to it, or words to that effect?

A. As I have said before, I have never seen the contract, but I think the minutes of Bond and Share of August 5, 1909 refer to this contract between Bond and Share and Bonbright and Company, and sets forth that Bonbright and Company would out of their total participation of $1,000,000 permit others to subscribe, persons whom it was considered may be interested in the project.

Q. Was not the actual language of the minute "with the understanding, however, that Bonbright and Company shall give to employees of this company and to such other persons or banks as the officers of this company deem it desirable to interest in [7733] the project a reasonable proportion of their 2/5ths allotment in the syndicate"?

A. Mr. Berman, you having read from a document that I furnished you, I am certain that it is correct.

MR. BERMAN: The excerpt is from the minute of the Executive Committee meeting of August 5, 1909 which is in evidence in this proceeding as Commission's Exhibit 135.

May we have a brief recess at this point?

THE EXAMINER: Yes, we will take a short recess.

(At this point, a short recess is taken, after which the hearing is resumed.)

By MR. BERMAN:

Q. Will you kindly tell us, Mr. Wiegers, who the persons were to whom Bonbright and Company granted participations pursuant to the understanding between Bonbright and Bond and Share? Do you have a list of those persons?

A. I have a list here of all of the syndicate participants.

Q. May I have a copy of that?

A. (Handing paper to counsel.)

MR. BERMAN: I ask that this list be received as Commission's Exhibit 143.

THE EXAMINER: Admitted.

(Commission's Exhibit 143 received in evidence.)

[7734] By MR. BERMAN:

Q. Running down this list, Mr. Wiegers, will you kindly identify the individuals on it for us?

A. I will as far as I can, Mr. Berman.

Mr. Mitchell was associated with Electric Bond and Share Company.

Mr. Coffin was with the General Electric Company.

Q. He was its president, was he not, or the Chairman of the Board?

A. I don't know whether he was Chairman of the Board or president. I do know that he was associated with General Electric Company.

Q. In a high executive capacity?

A. In an executive capacity.

Bonbright & Company.

Messrs. Randle, Davidson and Wilbur—the only method I have to identify those people are that they were parties to one of the agreements for the purchase of some of the Kansas properties.

Q. They were concerned in that Wichita situation, were they not?

A. That is correct.

Q. Mr. Breed—

A. (Interrupting) I believe the record shows that Mr. [7735] Breed was an officer of American Gas & Electric Company and was or shortly thereafter became its president. Is that your recollection?

A. My recollection is that he was an executive then with the American Gas; I don't know whether he was at this time, but I know that subsequently he was.

Mr. A. M. Young, I believe was a director of Bond and Share.

Chas. Pratt & Company—I don't know exactly who they were.

F. A. Vanderlip was associated with the National City Bank of New York, as I recall it.

I don't know Mr. Leon Van den Bosch, nor M. P. Clough.

A. W. Burchard, I think was in American Gas & Electric Company.

Q. He was also assistant to the president of the General Electric Company, was he not?

A. I don't know that, but I know that subsequently he was in the American Gas & Electric Company.

Hinsdill Parsons was a director of Bond and Share Company.

Q. General counsel of the General Electric Company as well, was he not?

A. I don't know that.

Mr. Tidd—I don't know what he was at this time, but I know that he later became president of American Gas & Electric Company.

I don't know Mr. McKee.

Myron T. Herrick, I know him as a former Ambassador to France.

[7736] I don't know Gordon, nor Eddy, nor Maxwell.

F. L. Dame was associated with Electric Bond and Share Company at that time.

Q. Wasn't Maxwell one of those concerned in the purchase of the property of the Home Light, Heat & Power Company of Kansas?

A. There was a C. M. Maxwell who was interested in that purchase, yes.

A. E. Smith was associated with Electric Bond and Share Company.

Frank B. Ball—I don't know his connection at that time, but I think later on he became associated with American Gas & Electric.

E. W. Hill was associated with Electric Bond and Share Company.

I don't know Lovejoy.

H. H. Dean was I believe a vice president of Electric Bond and Share Company.

I don't know Nash.

Russell Armstrong was associated with Electric Bond and Share Company, as was George J. Anderson.

F. G. Sykes was with Electric Bond and Share Company.

A. C. Dickson and D. F. McGee were in the employ of Electric Bond and Share Company, as was R. J. McClelland.

[7737] I don't know C. P. Hamilton.

Q. Wasn't Mr. C. P. Hamilton the gentleman who acted as intermediary?

A. No, sir, that was C. M. Hamilton.

Q. Wasn't C. P. Hamilton associated with General Electric Company?

A. I don't know.

The next is Adam Gschwindt, and I don't know who he was.

I don't know Conklin, Shain, nor Campbell.

M. H. Arning was associated with Electric Bond and Share Company.

E. P. Summerson was associated with Electric Bond and Share Company.

Q. In what capacity was Mr. Arning associated with Electric Bond and Share Company? Was he an auditor?

A. I don't know; I don't have the record here.

I don't know Fitting and I don't know Webber.

MR. MACLANE: May I say that our records here do not indicate that H. H. Dean was associated with Bond and Share at that time.

THE WITNESS: I may have been in error, Judge, when I said that he was a vice president. I am sure that there was an H. H. Dean associated with the company.

MR. MACLANE: That is, there was one in the employ of the company?

[7738] THE WITNESS: There was one in the employ of the company. I may have been in error in stating he was a vice president.

MR. MACLANE: One of the gentlemen of the Commission suggested that he was a vice president, and now our tabulation of officers and directors does not indicate that he was a vice president.

MR. BERMAN: It is not material so long as we are sure that he was associated.

By MR. BERMAN:

Q. When the distribution was made of the 10,808 shares of common stock remaining after Electric Bond & Share Company received 16,211 for its 60-percent participation, were the securities distributed on a ratable basis to the persons whose names are listed on this exhibit?

A. I think that is correct.

Q. How did Electric Bond and Share Company treat on its books the 16,211 shares of common stock of American Power & Light Company which it received through the syndicate participation?

A. The 16,211 shares so received were recorded in the Investment Account of Electric Bond and Share Company at $243,165.

Q. On the books of the American Power & Light Company, these shares had a par value of $1,621,100, did they not?

[7739] A. That is correct.

Q. On what basis was this sum of $243,165 recorded on the ledgers of Electric Bond and Share Company?

A. As I recall it, they were accorded at an appraised value of $15 per share.

Q. That sum did not represent, nor did it purport to represent any investment that the Electric Bond and Share Company had in those shares, did it?

A. As I recall the entry, it said that these shares were received for services in connection with the syndicate and were to be recorded at $243,165.

Q. Actually, so far as the investment went, it is a fact, is it not, Mr. Wiegers, that Electric Bond and Share Company had recovered back every dollar that it had theretofore invested in the various properties which went to American Power & Light Company; it had recovered back all sums expended by it as expense or incurred in connection with management; it had recovered back interest on such disbursement; and it had recorded as carried to surplus the sum of $69,595 as profit on the Astoria securities; isn't that so?

A. I think that this Exhibit 142 indicates the aggregate of charges to the syndicate of $2,500,000 was reimbursed by the proceeds from the sale of preferred stock.

Q. I think you misunderstood my question. My question was [7740] as to Electric Bond and Share Company's investment position in respect to the properties turned over to the syndicate. It is a fact, is it not, that at the time Electric Bond and Share Company received these 16,211 shares of common stock of American Power & Light Company, Electric Bond and Share Company had recovered back all sums it had invested in the properties, conveyed to the syndicate, all sums to which it had committed itself, all sums it had expended in connection with these properties in any way, interest on any such disbursements, and a profit on the Astoria properties of $69,595; isn't that so?

A. I think that is so.

Q. Actually it had on its books no amount which represented any expenditure or investment of any money in connection with these properties, isn't that so?

A. No expenditure that could be specifically assigned as cost of these properties other than those that were recorded in this tabulation.

Q. All of which it had recovered back?

A. All of which it had recovered back, yes.

Q. Plus that $69,595 carried to Surplus?

MR. MACLANE: May I just suggest that possibly there is a little obscurity about that. Wouldn't you

better say that it had recovered it back or did recover it back, because you are relating two things in time, and this account runs almost two [7741] years?

MR. BERMAN: I am willing to phrase the question in the terms of Judge MacLane's amendment.

By MR. BERMAN:

Q. Now, can you reply in the affirmative to that question?

A. Yes.

Q. And our computations have already made allowance for the $80,223.66 subsequently paid in 1911 and 1912 to American Power & Light Company through Hamilton, isn't that so?

A. That is correct.

Q. In addition to the sums we have heretofore stated, is it not a fact that Electric Bond and Share Company received certain sums as an arbitrary allowance for expenses and services in connection with the syndicate operations?

A. As I recall it, the syndicate participants other than Electric Bond and Share Company paid an amount equal to 5 percent of their participation to Electric Bond and Share Company.

Q. Since their participation aggregated $1,000,000, that made $50,000, did it not?

A. That is correct.

Q. How did Electric Bond and Share Company treat the sum of $50,000 received from the syndicate participants?

A. That was taken into the Income Account or Surplus Account of Electric Bond and Share Company.

[7742] Q. Did Electric Bond and Share Company record any actual expenses in connection with the syndicate operation other than those involved in the syndicate's operations and charged against the syndicate account prior to distribution of the net proceeds?

A. I don't think that this table includes the salaries of the executives and others who devoted their time to the syndicate.

Q. In other words, if there is any expense applicable to the $50,000 received, it would be such as was derived from whatever time executives of Electric Bond and Share Company spent in connection with the syndicate's affairs; is that correct?

A. That is correct.

And such amount would have been absorbed in the expenses of Electric Bond and Share Company.

Q. But no definite amount of any kind was entered against the $50,000 received from the syndicate participants?

A. That is correct.

Q. Actually, that sum was entered in the Income of Electric Bond and Share Company?

A. That is correct.

Q. Is it therefore a fair conclusion that the 16,211 shares of common stock of American Power & Light Company received by Electric Bond and Share Company represented no cash investment whatever at the time they were received?

[7743] A. I do not think that any specific amount expended could be indicated as applicable to the 16,211 shares of stock.

Q. Is it not a further fact that in connection with the acquisition of these shares, Electric Bond and Share Company had recovered its entire previous investment and realized a profit of $69,595, and further realized $50,000 carried to its Income Account from the syndicate?

A. Yes, they did do that. However, again, I want to point out that there was the time of the executives that was devoted to the operation of the syndicate that was not necessarily set forth as such and which amounts would have been absorbed in the expenses of Electric Bond and Share Company.

Q. Well, the executives of Electric Bond and Share Company would have been required to spend time on any sales or purchases made by Electric Bond and Share Company, would they not?

A. That is correct.

Q. So that no executives received any extra compensation, so far as you know, did they?

A. That is correct. My point is that had there been specific expenses assigned to specific classes of income, there might well have been an amount which would offset or partially offset the $50,000 placed to Income.

Q. If executives of Electric Bond and Share Company were using part of the time which they owed to their corporation because [7744] they were paid by their corporation in connection with the affairs of this syndicate, should not those executives who participated as syndicate members have made reimbursement to the corporation for part of their time which was devoted to their own personal affairs in connection with this syndicate?

MR. MACLANE: I object to this excursion into ethics.

MR. BERMAN: This is not an excursion into ethics; this is an excursion into the manner in which costs may be computed or allocated, and if Mr. Wiegers desires to raise, and he indicated he does, the question of whether Bond and Share did not incur certain amount of costs by reason of the time spent by its executives, I ask Mr. Wiegers to tell me whether the executives of Bond and Share who were syndicate participants in their own personal capacity and profited therefrom, made some adjustments to the corporation for the time that they expended in connection with their personal affairs.

THE WITNESS: The point that I was trying to bring out, Mr. Berman, was that the income of Bond and Share was in one account, and all the expenses of Bond and Share Company was in another account, and

that one item of expense could not be specifically tied into the item of income. That is what I was trying to point out.

By MR. BERMAN:

Q. Mr. Sidney Z. Mitchell, the president of Electric Bond [7745] and Share Company, was a participant in this syndicate to the extent of $200,000, was he not?

A. That is correct.

Q. He recovered back his entire $200,000 and he received in addition a certain number of shares of common stock of American Power & Light Company, did he not?

A. I think that is true.

Q. Actually, he must have received 1/5th of the 10,808 shares which remained with Bonbright as a participant, isn't that correct?

A. I think that is approximately correct.

Q. Which would have given him some 2,161 shares?

A. That is approximately correct, yes.

Q. You say that Electric Bond and Share Company recorded these shares at an appraised value of $15 each. If we applied the same basis to what Mr. Mitchell received, how much would have been his dollar realization at the outset?

A. $32,415.

Q. And we know also that various other executives of Electric Bond and Share Company likewise received common stock of American Power & Light Company which represented a profit in varying amounts to each of them, isn't that so, Mr. Wiegers?

A. That is correct.

Q. Actually, can you tell us what market value the 27,019 [7746] shares of common stock of American Power & Light Company received by the syndicate after payment of all expenses came to equal?

A. No, sir; I have not the slightest idea.

Q. Do you not know what the highest price reached by this stock on the market was in the succeeding years?

A. I cannot say that I do; I don't recollect.

Q. The $243,165 which Electric Bond and Share Company ascribed on its books as the ledger value of the 16,211 shares received, did that remain constant or was it the subject of reappraisals through the years in the manner which you have described previously?

A. I am sure that it was subject to reappraisals in the manner I have previously described, because all of the assets of Electric Bond and Share Company were considered by the Reappraisal Committee.

Q. Is there any way that you can tell us what part of the sum at which Electric Bond and Share Company today carries its investment in the common stock of the American Power & Light Company is attributable to the original 16,211 shares received by the Electric Bond and Share Company at the time of American Power & Light Company's organization?

A. I know I cannot tell you right now. I should have to look at the records to see whether or not such an amount was [7747] ascertainable.

Q. Now, Mr. Wiegers, let me ask you this. We are agreed, are we not, that the initial 16,211 shares of common stock of American Power & Light Company represented no cash investment whatever by Electric Bond and Share Company, isn't that so?

A. Technically speaking, I think we have agreed on that.

COMMISSION'S EXHIBIT 494

A meeting of the Board of Directors of ELECTRIC BOND AND SHARE COMPANY was held at No. 71 Broadway, New York, N.Y., on Wednesday, March 11, 1925 at 3:30 o'clock in the afternoon.

Present: Messrs. H. C. Abell, A. C. Bedford, S. R. Bertron, F. A. Farrar, C. E. Groesbeck, E. K. Hall, E. W. Hill, E. G. Merrill, S. Z. Mitchell, F. B. Odlum, L. H. Parkhurst, Felix Rosen, Frank Silliman, Jr.

* * * * * *

The Chairman referred to the holdings of this Corporation in Power Securities Corporation, New Orleans Public Service Inc., Dallas Power & Light Company, Dallas Railway Company and Texas Interurban Railway, stating that they had been acquired for the most part in connection with reorganizations of operating utilities with the view of eventually vesting them in some holding or investment company somewhat in the manner followed in the case of American Power & Light Company and similar companies. He pointed out that Electric Bond and Share Company, with its limited capital, could not expect to keep as a permanent investment holdings of this character and magnitude and as such holder provide the substantial amount of additional money needed from time to time to expand such operating properties to meet the demands for increased service. He stated that plans had been under consideration for a very considerable length of time, and particularly since the acquisition of New Orleans Public Service Inc. common stock, for the organization of a new holding or investment company whose security holders would have the benefit of the geographical, climatic and industrial diversity afforded by the operating companies involved. He recommended the

present formation of such a company in conjunction with Utah Securities Corporation and outlined a plan that had been discussed with the parties interested, which was substantially as follows:

That a corporation would be organized under the laws of the State of Maine and that Utah Securities Corporation reorganize by turning over all its assets to this Corporation, subject to all of its liabilities, for a sum in cash equal to $10. plus four shares of the New Company's common stock for each share of common stock of Utah Securities Corporation outstanding; that this New Corporation would acquire from Electric Bond and Share Company substantially all of its holdings in Power Securities Corporation, New Orleans Public Service Inc., Dallas Power & Light Company, Dallas Railway Company and Texas Interurban Railway (Utilities Finance Corporation) the price to be paid as of December 31, 1924 to be approximately $25,500,000. cash, plus approximately 50,000 shares of the new company's common stock and 320,000 option warrants to purchase additional common stock at $25. per share; that the New Corporation would raise the funds to carry out the reorganization of Utah Securities Corporation and the purchase from Electric Bond and Share Company of additional holdings as well as funds for the development, extension and improvement of the operating properties, through the sale to the public through some banking house or houses employed for the purpose, at $100. per share and accrued dividends, of 400,000 shares of voting preferred stock (carrying cumulative dividends at the rate of $7. per share per annum) 40% of the purchase price to be paid immediately and the balance in 10% instalments on call; that the purchaser of each one share of such preferred stock, upon payment therefor in full, would also receive one-half share of common stock of the New Company. He stated that the parties interested had agreed that it would be very beneficial to the plan to have someone purchase for cash approximately 120,000 shares of second preferred cumulative stock at approximately $94. per share, with which

would be delivered 60,000 shares of common stock and 480,000 option warrants to buy additional common stock at $25. per share, with the right to surrender second preferred stock at $100. per share and accrued in payment for such common stock in connection with the warrants. He stated that if the Board approved the sale of Electric Bond and Share Company's holdings in these companies, as outlined, he would also like to have the Board's authority to purchase this second preferred stock, not for the purpose of holding more than a small portion, if any thereof, but for the purpose of distribution of all or a substantial part thereof to officers, directors and employees of Electric Bond and Share Company and the other companies interested and to other persons, firms and corporations that might prove helpful to the Electric Bond and Share Company and the new company. He also stated his desire to purchase approximately 50,000 shares of such preferred stock for distribution in like manner.

He stated that Electric Bond and Share Company holds certain Income Bonds of New Orleans Public Service Inc. and certain First Mortgage Bonds of Dallas Railway Company and Dallas Terminal Corporation, which could later be disposed of on advantageous terms through public offering and, consequently, it was planned to retain these rather than to vest them in the New Company, and that the price of approximately $25,500,000. was intended to cover only the following:

Power Securities Corporation		
Second Preferred Stock	16,412.765	Shares
Common Stock	119,478	"
Collateral Trust Bonds 6s	$ 318,600	
Secured Income Bonds 6s	1,556,300	
New Orleans Public Service Inc.		
Common Stock (or voting trust certificate therefor)	652,729.725	Shares
Dallas Power & Light Company		
Preferred Stock	8	Shares
Common Stock	113,750	"
Dallas Railway Company		
Preferred Stock	5,000	Shares
Common Stock	20,599	"

Demand Notes 7s	$ 575,000	
Demand Notes 6s	150,000	
Income Notes 6s	2,529,868.59	
Texas Interurban Railway Company		
Preferred Stock	10,000	Shares
Common Stock	15,000	"
Notes 6s, 1932	$2,500,000	
Dallas Hotel Company		
Common Stock	15	Shares
Dallas Ice Factory		
7% Mortgage Notes	$ 70,000	
Dallas Power & Light Company Inc. (N.Y.)		
Capital Stock	5	Shares
New Orleans Public Service Inc. (N.Y.)		
Capital Stock	5	Shares
Advance to C. E. Calder	$ 7,500	

After discussion and on motion duly made, seconded and carried, it was

RESOLVED that the general plans of the officers of this Corporation with respect to certain of the holdings of this Corporation in securities of Power Securities Corporation, Dallas Power & Light Company, New Orleans Public Service Inc., Dallas Railway Company and Texas Interurban Railway Company as outlined by the Chairman be, and the same hereby are, approved in principle; and further

RESOLVED that the officers of this Corporation be, and they hereby are, authorized to sell the following securities of this Corporation for such price as may be approved by the officers of this Corporation, not less than $25,000,000 cash as of December 31, 1924, plus the delivery to this Corporation of 50,000 shares of common stock of the New Corporation to be formed to take over the assets of Utah Securities Corporation and not less than 300,000 option warrants of the said New Corporation to buy additional common stock at $25. per share:

Power Securities Corporation		
Second Preferred Stock	16,412.765	Shares
Common Stock	119,478	"
Collateral Trust Bonds 6s	$ 318,600	
Secured Income Bonds 6s	1,556,300	
New Orleans Public Service Inc.		
Common Stock (or voting Trust Certificate therefor)	652,729.725	Shares
Dallas Power & Light Company		
Preferred Stock	8	Shares
Common Stock	113,750	"
Dallas Railway Company		
Preferred Stock	5,000	Shares
Common Stock	20,599	"
Demand Notes 7s	$ 575,000	
Demand Notes 6s	150,000	
Income Notes 6s	2,529,868.59	
Texas Interurban Railway Company		
Preferred Stock	10,000	Shares
Common Stock	15,000	"
Notes 6s, 1932	$2,500,000	
Dallas Hotel Company		
Common Stock	15	Shares
Dallas Ice Factory		
7% Mortgage Notes	$ 70,000	
Dallas Power & Light Company Inc. (N.Y.)		
Capital Stock	5	Shares
New Orleans Public Service Inc. (N.Y.)		
Capital Stock	5	Shares
Advance to C. E. Calder	$ 7,500	

and further

RESOLVED that the officers of this Corporation be, and they hereby are authorized to purchase from the New Corporation, either directly or through such investment bankers as are employed to make a public offering (a) 120,000 shares of second preferred stock at $94. per share, plus accrued dividends, with which will be delivered 60,000 shares of common stock and 480,000 option warrants to buy common stock at $25. per share; and (b) not to exceed 75,000 shares of preferred stock of said New Company, and to distribute, at the cost thereof, to such persons, firms and

corporations as the Chairman shall select, all or any part of the preferred stock, second preferred stock and other securities so purchased. It was further

RESOLVED that the officers of this Corporation be, and they are hereby authorized to take all steps and do all things necessary to complete the formation of the New Company and the reorganization of Utah Securities Corporation and the sale of the specified assets of this Corporation to such New Company, all substantially in accordance with the plans outlined by the Chairman at this meeting.

The Chairman outlined to the Board the history of the acquisition of this Company's holdings in Power Securities Corporation and the arrangements he had made with Charles Hayden at approximately the time that a portion of such acquisitions in Power Securities Corporation were sold at cost to certain persons, firms and corporations, to sell to Mr. Hayden a substantial block of said securities. He stated that in view of the many transactions which had taken place since the time of such arrangements, he was of the opinion it would be advantageous to sell to Mr. Hayden, if acceptable to him, a small interest in the securities which will be disposed of by this Corporation in connection with the reorganization of Utah Securities Corporation, this interest or participation to substitute for the original arrangement.

After discussion, and on motion duly made, seconded and carried, it was

RESOLVED that the Chairman of the Board be and he hereby is authorized and empowered to offer to Charles Hayden a $300,000. participation at cost in the securities owned by this Corporation, and which will be by it sold, assigned and transferred to the Corporation resulting from a reorganization of Utah Securities Corporation, this participation to be in lieu of and to substitute for the arrange-

ment made previously whereby Mr. Hayden might purchase certain of this Corporation's holdings in securities of Power Securities Corporation.

The balance sheet of the Company for the period ended December 31, 1924 was presented to the meeting, which showed that the surplus earnings were sufficient to declare a dividend of 2% on the outstanding common capital stock of the Company.

Whereupon, it was

VOTED that a dividend of 2% on the common capital stock of the Company be and the same hereby is declared from the surplus earnings of the Company for payment March 11, 1925 to the stockholders of record at the close of business on said date.

There being no further business, the meeting

Adjourned

E. P. SUMMERSON,
Secretary.

May 29, 1942

JOE H. GILL, President of Electric Power & Light Corporation.

CROSS-EXAMINATION

[17788] Q. Now, let us turn to see if we can summarize in a cohesive fashion the situation as it affected Electric Bond & Share Company.

Electric Bond and Share Company took three types of action with respect to Electric Power & Light Corporation, did it not, Mr. Gill, namely, as a stockholder of Utah Securities Corporation it turned in its Utah common stock and received Electric Power & Light common and cash in exchange?

A. That is correct.

Q. As the owner of that basket of Power securities, Dallas and New Orleans securities, it turned those over to Electric Power & Light Corporation via deBuys, and received certain cash and common stock and options, did it not?

A. Yes, I think you can say it did that.

Q. And then it also subscribed for second preferred stock of Electric at $94 a share and arranged to distribute that second preferred among various persons and to pay over an [17789] agreed price to Electric for it?

A. That is correct.

Q. It also had a certain responsibility in procuring Bonbright to act as the underwriter with respect to the first preferred stock and it did make the arrangements with Bonbright?

A. I assume that is correct.

Q. Now, Mr. Wiegers has already testified at page 12,561 of the record that in March of 1925 Electric Bond and Share Company owned some 56,193 shares of the common stock of Utah Securities Corporation at a cost (set forth at page 12,563 of the transcript) of $609,975.63.

Will you verify that, please?

A. That is correct.

Q. Now for that Electric Bond and Share necessarily received $561,930 in cash and 224,772 shares of common stock of Electric Power & Light Corporation, did it not?

A. That is correct.

Q. So that the cash Electric Bond and Share Corporation received in the Utah deal fell just about $45,000 short of giving it its entire cost of its investment in the Utah Securities Corporation situation, leaving it with the 224,772 shares of common stock of Electric, costing it $48,045?

A. $48,045, that is correct.

[17790] Q. Now, on the other hand, Electric Bond and Share Company received the cancellation of $440,564 of duplicate service fees which it had collected from Utah Securities Corporation and Utah Power & Light Company which was cancelled in this deal. Isn't that true?

A. Well, Utah Securities released it from any claim it had on that $440,561.81.

Q. It was found, as I think we discussed earlier, that Bond and Share had collected service fees for the same services from both Utility Power & Light and Utah Securities Corporation in an amount of $440,564, and that Utah Securities Corporation had a claim to recover back that duplicate amount?

A. That is correct.

Q. Which was released to Bond and Share?

A. That is correct.

[17791] Q. Therefore, the cancellation of that $440,564 was the cancellation of an amount owing by Bond and Share to Utah Securities Corporation and should be offset against the cost of the 224,772 shares of common stock, leaving Bond and Share with a cost of about minus $400,000 for that 224,772 shares. Wouldn't you agree?

A. That would be the correct interpretation from the standpoint of Utah Securities and the standpoint of its claim. Just what position Bond and Share would take, I am not prepared to say.

Q. Now, that accounts for one group of securities received by Bond and Share in connection with the formation of Electric. In addition, for turning over to Electric the basket of securities which had cost Bond and Share $21,085,424 it received $25,448,512 in cash and—

A. Wait a minute.

Q. From deBuys?

A. That is correct.

Q. And it also received 310,000 shares of common stock of Electric Power & Light Corporation and 800,000 option warrants?

A. That is correct.

Q. Of that 310,000 shares of common stock Electric Bond and Share subsequently redistributed to Bonbright, to [17792] the purchasers of the second preferred stock, 255,260 shares, leaving it with approximately the 65,000 shares of which we spoke earlier. Isn't that so?

A. I don't know. I thought it delivered 200,000 to Bonbright and 60,000 to the purchasers of the second preferred stock.

Off the record.

(Discussion off the record.)

By MR. BERMAN:

Q. It did, but of course it retained some of the second preferred and thereby retained some of the common, but leaving that out of consideration for the moment, deduct the 60,000 for the second preferred and the 200,000 to Bonbright, leaving it at this point with 50,000 shares of common?

A. Yes.

Q. And how many option warrants out of 800,000 remained with it?

A. If we were correct in our assumption this morning that it placed four option warrant out with each share of second preferred, it would have placed out 480,000, and retained 420,000 for its own account.

Q. Now, at that point is it correct to say that by virtue of transferring the basket of securities Electric Bond and Share Company received in cash more than $4,000,000 in [17793] excess of its entire cost of those securities, and in addition held 50,000 shares of common stock of Electric Power & Light and 320,000 option warrants without cost to it?

A. That would be correct.

Q. Now, Electric Bond and Share turned around and subscribed to 120,000 shares of second preferred of Electric Power & Light at $94 per share, and immediately sold 110,520 shares of this second preferred to this select list we have been speaking of, together with a half share of common for each share of second preferred, and the four option warrants, all of which we have accounted for already, but that left Electric Bond and Share with approximately 9,480 shares of second preferred stock?

A. That is correct.

Q. That residium of second preferred stock which Electric retained carried with it 4,740 shares of common and 37,920 options.

A. In their general unit that we have been discussing that would be correct.

Q. And these were entered in the investment account of Electric Bond and Share according to the company's records at $854,904 for the second preferred, $36,216 for the 4,740 shares of common and the options, or a total of $891,120.

I show you Bond and Share's investment account and ask [17794] you whether you note those figures, Mr. Gill.

A. Yes. There is an entry in the investment account of Electric Bond and Share which you have shown me which sets forth as of the end of December, 1926 a balance of 9,480 shares of second preferred stock or Electric Power & Light at $854,904 as book value.

Q. And the common stock entries are scattered around but, suppose we assume that the $36,000-figure I mentioned is correct, subject to check by Mr. Wiegers.

A. That is satisfactory.

Q. Now, if I collect these various figures on the Electric Bond and Share, we have 50,000 shares of common from the basket, we have 224,772 shares from Utah Securities Corporation, we have 4,740 shares acquired in connection with the second preferred retained, we have 279,512 shares of common in all, and approximately 400,000 option warrants.

A. That is correct.

Q. In addition there were these 9,480 shares of second preferred stock?

A. That is correct.

Q. Now, as against that for the first 50,000 shares we agreed we have an equivalent of a cost of minus $400,000 approximately; for the first block of 224,772 we agree we had a cost of approximately minus $400,000, for the second block [17795] of 50,000 shares giving effect to the excess of cash received over cost we would have a minus cost of approximately $4,200,000 or, so far minus $4,600,000 against which we must credit $891,120 for the 9,480 shares of second preferred and the 4,740 common and the block of option warrants, must we not, leaving a minus figure of approximately $3,700,000. Is that not so?

A. That is correct.

Q. And just to be sure we are straight on that, as against that minus $3,700,000-figure we have Bond and Share owning 279,512 shares of common stock, approximately 400,000 option warrants and 9,480 shares of second preferred?

A. That is correct.

Q. Now, those 279,512 shares of common stock and the 9,480 shares of second preferred stock gave Electric Bond and Share Company approximately 16 per cent of the outstanding voting securities.

A. That is my recollection.

Q. As a matter of fact, Mr. Gill, Electric Bond and Share Company actually picked up another 19,534 shares

of common stock by virtue of purchasing from Chase Securities Corporation and Chase Bank in July and August of 1925, blocks of the first preferred carrying a bonus common with it, and sold off the first preferred, recovering back its cost and [17796] making a profit, and retaining the common stock that went with the first preferred at no cost, or a minus cost. Are you familiar with those transactions at all?

A. No, I am not. I would be perfectly willing to say so on your word, but they are Bond and Share's accounts and I would not know how to trace them.

Q. However, it may be noted here that if effect be given to the 19,534 shares acquired in that way, Bond and Share had an initial position of 299,772 shares rather than the 279,512 of which we have spoken.

A. I think that is also stated in the stipulation.

Q. That is set forth at page 961 of the stipulation of facts, being Commission's Exhibit 68-D in evidence in this proceeding, I believe.

Now, the fact of the matter is, is it not, Mr. Gill, that Electric Bond and Share although owning only 16 per cent of the voting securities, had effective voting control of Electric Power & Light Corporation from the very beginning, did it not?

A. That is correct.

Q. That followed not only by virtue of the fact that Electric Bond and Share had this concentrated block of stock, but also because Electric Bond and Share Company was in a position to and did nominate the board of directors of Electric Power & Light Corporation, more than a majority of whom [17797] at all times were affiliated with Electric Bond and Share Company and by virtue of the fact that a service contract was entered into between Electric Power & Light Corporation and Electric Bond and Share Company, whereby Bond and Share acquainted its employees, officers of Electric Power & Light and its employees kept the books of Electric Power & Light Corporation and ran the business in every detail. Isn't that true?

A. That is correct.

Q. Looking at the transaction in its overall aspects, Mr. Gill, would you not say that the effect of this situation was that Electric Bond and Share Company got back all of its investment in all the situations which were turned over to Electric Power & Light plus this substantial profit of approximately $4,000,000, and in addition it owned the securities of Electric Power & Light Corporation without cost and it controlled Electric Power & Light Corporation?

A. I think that is the effect of the facts set forth in the record.

Q. As part of the service contract which was executed between Electric Bond and Share Company and Electric Power & Light Corporation, Electric Power & Light Corporation agreed to have its subsidiaries also enter into service contracts with Electric Bond and Share Company, did it not?

A. In the proposal of Electric Bond and Share Company [17798] to Electric Power & Light, which was Exhibit D attached to Commission's Exhibit 507, the first paragraph states that:

> "We will coöperate with you so far as reasonable and proper for us so to do, to the end that each one of your subsidiary operating public utility companies will enter into a supervision agreement with us in the form attached, with such modification thereof or changes therein as may be mutually agreeable,"

and it makes reference to the period or periods and says that they will furnish the service when requested by the subsidiary or by Electric Power & Light to the same extent that such agreements have been executed and, states further the form of the contract that would be executed.

Q. Of course, that puts it in a rather negative sense, that Electric Bond and Share will coöperate with Electric Power & Light in getting Electric's subsidiaries to enter into service contracts with Bond and Share?

A. And in the deBuys agreement he agreed to have Electric Bond and Share enter into such an agreement with Electric and then—

Q. The fact of the matter is that all the subsidiaries of Electric Power & Light did receive services from Electric Bond and Share Company, did they not?

A. That is correct.

[17799] Q. And if I correctly recall the purport of your direct testimony in such cases as the Dallas companies and New Orleans Public Service, where the local authorities were apparently not disposed to allow these service fees to be paid by the operating companies as an expense in these years, Electric Power & Light Corporation had to pay that cost to Electric Bond and Share Company directly, did it not?

A. Yes, it had that agreement.

Q. I have never been clear on this point, Mr. Gill, as to whether Electric Power & Light Corporation was able to recover from the subsidiaries in any form the fees which it paid to Electric Bond and Share on their behalf.

MR. FROMEN: I think we have furnished a statement to that effect, Mr. Berman.

MR. BERMAN: What statement was that?

THE WITNESS: There were some recovered from the Dallas companies on the salaries allowed.

MR. FROMEN: That is Commission's Exhibit 777,

MR. BERMAN: Thank you.

By MR. BERMAN:

Q. Certain salaries were paid by the operating companies like Mr. Hill's, I think, in the case of one of the Dallas companies, but I mean when Electric paid the fees to Bond and Share—

[17800] A. You mean did Electric in turn collect any fees from subsidiaries to compensate itself for payments it had made to Bond and Share?

Q. Yes.

A. My recollection of the record and the facts is that it did not do so at anytime other than in the case of compensation paid certain individuals.

Q. Yes, I am familiar with that.

Well, in that respect, of course, that was an additional benefit to Electric Bond and Share arising from the superimposition of Electric Power & Light Corporation between Bond and Share and the operating companies, was it not, in that while Bond and Share owned the companies directly it was unable to get the fees in the cases where the companies were not permitted to pay them, but once Electric Power & Light Corporation came into the situation it was Electric which had to stand that cost but Bond and Share got the full fee?

A. There is no question but what Electric had to stand the full cost and I am sure Electric Bond and Share got the full fee.

Q. Whereas prior to that time Electric Bond and Share had not been able to collect—

A. I am not certain about that.

Q. Now, on the control features, there would seem to be [17801] be no necessity for elaborating on those. We have a pretty clear picture of the manner in which Electric Power & Light and the other subholding companies were operated up to 1935.

It is a fact, is it not, that until May 9, 1925, the directors of Electric Power & Light Corporation were either the clerks in the office of the Maine attorneys of Electric Bond and Share who formed the corporation, or clerks in the office of Simpson, Thacher & Bartlett, and it was not until June 5, 1925, that persons other than these clerks in the attorneys' office commenced to be put on the board of directors?

A. I don't want to say that all of these people were merely clerks in the attorneys' office. My recollection is that it was sometime in the latter part of May or the first part of June, 1925, when there were substantial changes made in the personnel of the board of directors, and that, as I recall it, Messrs. Cowan and—

Q. I didn't intend any insidious implication by the use of the term "clerks", Mr. Gill. Some of my best friends are clerks, but I believe that is the manner in which they are termed by law firms, indicating that they are not partners of the firm but young lawyers employed there.

A. I think some of them were partners.

Q. Some of them have subsequently risen to high position life?

[17802] A. I think until the changes made in June and September of 1925, particularly until early in June, 1925, the directors were members either of Southard, Fogg & McLean, attorneys at Augusta, Maine, or attorneys connected with the firm of Simpson, Thacher & Bartlett of New York City.

On about June 29th there was almost a complete shift in the personnel of the board.

Q. And at that time we find officers of Electric Bond and Share Company and of affiliated companies, together with other persons whom we recognize as having been on various Electric Bond and Share boards came into office?

A. That is correct.

Q. Of course, by June 29th the principal acts in connection with the setting up of this company, the issuance of its securities, the establishment of its balance sheet and even such important acts as the acquisition of Southern Power & Light, had taken place, had they not, Mr. Gill?

A. That is correct.

June 10, 1942

L. B. WIEGERS, Secretary and Treasurer of Electric Bond and Share Company.

CROSS-EXAMINATION

[18135] Q. Mr. Wiegers, at the outset of your testimony today I want to ask you to clear up a few points which are left in doubt with reference to the formation of Electric Power & Light Corporation in 1925.

You gave some testimony on that subject at page 12566 of the transcript and subsequent pages, and we have had testimony from Mr. Gill recently with reference to other phases of that same subject, and our desire at this time is to clear up some ambiguities.

At page 12566 of the transcript you testified that in connection with the formation of Electric Power & Light Corporation, Electric Bond and Share Company turned over to [18136] Electric Power and Light Corporation a basket of securities comprising Power Securities Company, the Dallas Company, New Orleans Public Service Company and other miscellaneous items for which Electric Bond and Share Company received a certain sum in cash, securities of Electric Power & Light Corporation and other considerations.

Do you recall your testimony in that regard?

A. Yes, I do.

Q. I think you stated that the amount of cash received for that basket was $25,448,512.

A. That is correct.

Q. In addition, Electric Bond and Share Company obtained a release from its obligation to repay $440,565 of duplicate service fees received from Utah Securities Corporation and its subsidiary, Utah Power & Light Company. Is that not true?

A. I am not certain that I said it was a duplication of fees but, as I do recall, it was said it was a release from the obligation, if any, that the Electric Bond and Share Com-

pany may have been under to reimburse to Utah Securities Corporation or Utah Power & Light Corporation, or its successor, for sums collected by Bond and Share for supervision fees amounting to approximately $440,564.81.

Q. In your testimony concerning Utah Securities Corporation I believe you did concede that there had arisen this [18137] question as to whether Bond and Share had not collected fees for the same services from both Utah Securities Corporation and its subsidiary, Utah Power & Light.

A. I recall that I did testify that such a question had arisen.

Q. And the amount involved was the sum referred to then, this $440,564-item, was it not?

A. That is correct.

Q. In addition to the cash and the release referred to, Electric Bond and Share Company also received 310,000 shares of common stock for this basket of securities, did it not?

A. And also 800,000 option warrants to purchase common stock of Electric Power & Light Corporation.

I would like to say, however, Mr. Berman, that the agreement under which the cash, release and the securities were received, also made certain provision for a disposition of a portion of the securities so received by Electric Bond and Share Company under that agreement.

Q. Yes. I think we have the agreements themselves in the record and I believe the record is clear as to that.

Now, you testified, I believe, that the cost of these securities transferred by Electric Bond and Share Company for the consideration we have just enumerated, was $21,273,584.

Will you tell us whether that figure is not slightly in [18138] error and whether actually the total cost as shown by the records of Bond and Share was not slightly less than the sum mentioned in the record?

THE WITNESS: Off the record.

(Discussion off the record.)

THE WITNESS: I do not have available with me the detailed figures from which I can check which of the two figures you have enumerated is correct. However, I will be pleased to furnish a table which will show, from the records of Electric Bond and Share Company, its cost of the securities delivered to Electric Power & Light Corporation pursuant to the agreement of March 12, 1925.

By MR. BERMAN:

Q. I wish you would do that, Mr. Wiegers, and will you also itemize separately any amounts contained in the investment account of Bond and Share with respect to these investments representing (a) reappraisal of the carrying value of such securities and (b) interest or dividends accrued or carried in that account? Will that be done?

A. I will do that, yes.

Q. We also note in connection with testimony given by you concerning Power Securities Corporation and Bond and Share's investment in such company, that there is a small discrepancy between the figures mentioned by you and a further discrepancy [18139] between figures shown by records of the company in our possession and the figures you have given.

At page 1264 you referred to Bond and Share's cost for Power Securities Corporation securities as $691,382.79. At page 1226 you referred to the sum of $661,671.53.

The investment account of Bond and Share in Power Securities Corporation seems to indicate a cost of $606,397.26.

We will appreciate it if you will clarify that situation and give us a definite and final figure.

A. This tabulation that I have agreed to prepare, I am sure will show that. Again, I think the difference there is cost and book value, the element of reappraisal entering into it.

Q. Mr. Wiegers, in connection with the reorganization

of Electric Power & Light Corporation, the $7 preferred stock of Electric was issued through an underwriting agreement between Electric Power & Light Corporation and Bonbright & Company, was it not?

A. That is correct.

Q. And the offering actually took the form of allotment certificates representing a share of $7 preferred stock plus one-half share of common stock, and providing for the payment of a certain amount down and the balance of the payments on call at various intervals?

[18140] A. That is correct. The original offering was for 400,000 allotment certificates which, when fully paid, entitled the holder to one share of $7 preferred stock and one-half share of common stock, and that is the reference I made before as to the Electric Bond and Share Company providing the 200,000 shares of common stock for the purpose of issuance of shares to the holders of the fully-paid allotment certificates.

Q. It is a fact, is it not, that on April 1, 1925, Electric Bond and Share Company purchased 50,000 blocks or allotment certificates from Bonbright & Company at $100 per share, with Bond and Share receiving back commission of $6 per allotment certificate?

A. The payment to Bonbright & Company at approximately April 1st was for a 40 per cent payment on 50,000 allotment certificates for $7 preferred stock and, the payment was made for $2,000,000.

Subsequently, and very closely thereafter, there was received a refund of $6 per allotment certificate.

Q. Now, did Electric Bond and Share dispose of all these 50,000 allotment certificates at its net cost of $94 per certificate to various affiliated persons and interests?

A. Electric Bond and Share Company disposed of 47,200 of the allotment certificates, the 40 per cent of paid allotment [18141] certificates at its cost. The balance of 2,800 of such allotment certificates were paid in fully by Electric Bond and Share Company and they in turn received

2,800 shares of $7 preferred stock and 1,400 share of common stock.

The 47,200 allotment certificates were sold to some 200—or 300-odd people.

Q. So that, as a result of the retention of the 2,800 allotment certificates, Bond and Share had in its investment portfolio 2,800 shares of $7 preferred and 1,400 shares of common stock?

A. That is correct.

Q. And certain of these shares were sold in the years 1927 and 1928, were they not, among other shares which were disposed of by Bond and Share?

A. That is correct.

Q. Is it a fact that in July and August of 1925 Electric Bond and Share Company purchased from Chase Securities Corporation and Chase National Bank, a total of 41,684 allotment certificates or blocks of preferred and common in the proportion previously mentioned?

A. That is correct.

Q. And will you tell us the prices that were paid for these blocks?

A. On July 15th 37,968 blocks were purchased at $100 [18142] per block and 3,168 blocks at $109 per block. On August 19th 548 blocks were purchased at $107.50 per block.

Q. As a result of this series of transactions we have just discussed in the allotment certificates for the $7 preferred stock of Electric Power & Light Corporation, is it true that when this account was closed out on March 13, 1929 as a result of sales which had been made of the transferred stock from time to time the account showed a profit of $106,869 and contained a balance of 485 shares of $7 preferred plus 19,534 shares of common stock?

A. Do you have a copy of the transcript of the investment account which I think indicates that quite clearly?

Off the record.

(Discussion off the record.)

THE WITNESS: The transcript of the investment account as previously furnished to the Commission does indicate what you have said, Mr. Berman. The transcript of the investment account of Electric Bond and Share Company may be identified at page 3 of a document entitled "Electric Bond and Share Company, transcript of investment accounts" and the first item "Electric Power & Light Corporation".

MR. BERMAN: Mr. Examiner, from time to time there has been reference in this proceeding to figures contained in transcripts of the various investment accounts of Electric [18143] Bond and Share Company and of the subholding companies in this proceeding.

We have been furnished by the respondents with numerous transcripts of these investment accounts.

Rather than encumber the record by asking that these transcripts be received in evidence, I am asking counsel for the respondents to stipulate with me that either side may, if it decides, refer to any data contained in these transcripts of investment accounts in their proposed findings of fact or in briefs, and the Commission may refer to any such data in making its findings and, in the event that any such data is relied on either by counsel in its proposed findings or by the Commission in its findings and opinion, that the specific matter relied on will then be indicated and made part of the formal record of this proceeding for purposes of review.

The purpose of this stipulation is to enable either side to rely on such data as they may find it necessary to rely on in these transcripts, without being placed under the necessity at this time of segregating such material, if there be any, or of incorporating the entire bulk of the material.

MR. HAWKINS: I would like to reserve an answer on that until later in the day.

MR. BERMAN: That is agreeable.

[18144] By MR. BERMAN:

Q. Now, Mr. Wiegers, in connection with the formation of Electric Power & Light Corporation, Electric Bond and Share Company agreed to and did subscribe to 120,000 shares of the $7 cumulative second preferred stock of Electric Power & Light Corporation at $94 per share. Is that not true?

A. That is correct and was pursuant to paragraph (c) of the previously referred to agreement dated March 12, 1925.

Q. And is it also a fact that Electric Bond and Share Company thereupon offered to allot to a selected list of subcribers this 120,000 shares of second preferred stock of Electric Power & Light Corporation, each share of which would carry with it one-half share of common stock of Electric Power & Light Corporation and four option warrants?

A. Of the 120,000 shares of second preferred stock and out of the common stock and option warrants acquired by Electric Bond and Share Company pursuant to the March 12, 1925 agreement, there was sold 110,520 shares of $7 second preferred stock, 55,260 shares of common stock and 42,080 option warrants at a unit cost of $94 per unit, and these units were sold to a list of approximately 200 to 300 people.

Q. And that list of subscribers included many employees of Bond and Share, employees and officers of affiliated companies, directors of the various companies and so forth, [18145] did it not?

A. I think that list did include many of those people.

Q. Are you able to tell us at this time whether the transactions on both sides, that is, as respects Electric Bond & Share subscription for the stock with Electric Power & Light on the one hand, and as respects Bond and Share's offering to allot subscriptions to this selected group of persons on the other hand, was on a 100 per cent cash basis, or was some arrangement made in either connection for partial payments?

A. I don't know offhand, but I am sure our records would indicate whether that was so or not, but I am not in a position to say at this moment.

Q. Will you advise us what the records indicate as to the time and manner in which Electric Bond and Share Company made payment to Electric Power & Light Corporation for the 120,000 shares of second preferred?

A. If that is your question I think I can answer it

Q. Please do.

A. The 120,000 shares of second preferred stock subscribed to by Electric Bond and Share Company, the amount due on such subscription was deducted from the amount of cash that Electric Bond and Share Company was to receive pursuant to the March 12, 1925 agreement.

[18146] I am sorry I didn't get your question clear.

Q. All right. That disposes of the question as far as Bond and Share and Electric Power & Light are concerned.

Now, in connection with the reoffer by Bond and Share to this list of subscribers to the second preferred stock plus the common stock and option warrant bonuses, was payment received by Bond and Share forthwith upon the subsciption for the full amount of $94 per block or was arrangement made in some cases for Bond and Share to carry these blocks when payment was made by the subscribers?

A. Again, I say I am not certain. My recollection is, however, that a substantial portion of it was paid in full shortly after the allotment.

However, I am not positive as to the length of time over which the balance of these subscriptions were paid.

Q. You will advise us as to the details concerning that, will you not?

A. I will.

Q. You stated that 110,520 blocks were disposed of through these subscriptions to a selected list. That left 9,480 shares of second preferred stock and 4,740 shares of common stock which was transferred, and 37,920 warrants which were closed out to the investment account of Electric Bond and Share Company?

A. Those amounts do represent the difference between [18147] 120,000 shares second preferred, 60,000 of common stock and 480,000 option warrants, and were transferred to the investment account where they still remain.

Q. Was that group of securities given a value of $891,120 in the investment account of Electric Bond and Share Company?

A. I think it is approximately $891,000 which is the 9,480 shares of second preferred stock at its cost $94 per share.

Q. Well, actually was not a specific value allocated to the second prefered stock, 9,480 shares in the amount of $854,904 and, $36,216 being specifically alloted to the 4,740 shares of common stock?

A. I am not able to answer your question specifically, Mr. Berman. However, I will refer to the records of the company and forward to you the information as it appears on the records.

Q. Now, Mr. Wiegers, I would like briefly to recapitulate with you the manner in which Electric Bond and Share Company acquired its common stockholdings in Electric Power & Light Corporation. We have already adverted to the fact that 310,000 shares of common stock of Electric were received by Bond and Share as part consideration for the transfer of the basket of securities by Bond and Share to Electric in 1925?

[18148] A. That is correct.

Q. Now, you have referred to the fact that a portion of that 310,000 shares was utilized by Bond and Share in connection with various offerings of preferred stock that were made by Bonbright and by Bond and Share in 1925.

A. That is, both preferred and second preferred.

Q. Yes. Now, what amount remained to Bond and Share of that 310,000-share block after allocating to Bonbright and to Bond and Share's preferred stock accounts, the portion of the common stock which was to go out with those securities?

A. The total number of shares originally acquired were 310,000 of which 200,000 were used in connection with the allotment certificates issued by Electric Power & Light Company and 55,260 shares disposed of with the sale of the second preferred stock. The total being 255,260 deducted from the 310,000 shares originally acquired leaves a remainder of 54,740 shares of common stock.

Q. And how were those securities carried in the investment account of Electric Bond and Share Company, that is to say, at what cost or value?

A. My recollection is it was a rather nominal book value.

Q. $1.00, wasn't it?

A. It might have been. My recollection is it was quite [18149] nominal.

Q. Now, in addition to that 310,000 shares of common acquired in connection with the transfer of the basket of securities, Bond and Share received a certain number of shares of Electric Power & Light common by virtue of its ownership of securities of Utah Securities Corporation which were involved in the exchange for Electric Power & Light common?

A. That is correct. Pursuant to the plan of reorganization of Utah Securities Corporation the common stockholders of that company were offered in exchange for the assets of that company, common stock of Electric Power & Light Corporation on the basis of four shares of common stock of Electric Power & Light Corporation plus $10 in cash, for each share of Utah Securities Corporation.

The Electric Bond and Share Company as the owner of 56,193 shares of Utah Securities Corporation common stock received in exchange for such holdings 224,772 shares of Electric Power & Light Corporation common stock plus $561,930 in cash, leaving a remaining book value applicable to the shares of Electric Power & Light Corporation common stock of $58,440.72.

Q. Now, included in the book value of $58,440.72 is some $8,150 of reappraisal made in the investment accounts

of Utah Securities Corporation prior to the transfer. Is [18150] that correct?

A. That is correct, approximately.

Q. And also included in the ledger figure or ledger carrying value of this block of Electric Power & Light common was some $2,247 representing the cost of tax stamps applicable to the exchange. Is that not so?

A. That is correct, yes, sir.

Q. Now, is it not true that in addition to the 224,772 shares of common acquired as you have related, through the exchange of the Utah Securities stock, and the 54,740 shares of common remaining with Bond and Share out of the 310,000 shares acquired as partial consideration for the securities basket transfer, Bond and Share acquired an additional 19,534 shares of common stock through various purchases of allotment certificates for preferred stock, which preferred stock was later sold, Bond and Share thereby recovering its full cost as leaving it with the 19,534 shares of common without cost?

A. Yes, that is approximately correct.

Q. Now, if we total the three blocks of common stock referred to, namely, the 54,740 remaining out of the 310,000 shares of common, the 224,772 received for Utah Securities common and the 19,534 shares acquired in connection with these particular stock transactions, what is the total?

A. 299,046 shares.

[18151] Q. Now, is it a fact that out of that total Electric Bond and Share Company disposed of 705 shares of common stock by a transfer to Charles Hayden, one of its directors, for "services"?

A. That is correct.

Q. No credit entry, however, was made to the investment account of Bond and Share for that 705 shares which went out to Hayden?

A. No dollar entry was made, merely the removal of 705 shares.

Q. Do the records of Bond and Share indicate any details as to the nature of the services performed by Mr. Hayden for which the 705 shares were delivered?

A. I have seen no details as to services rendered. However, the record indicates certain services were renderd by the firm of Hayden & Stone in connection with the Electric Power & Light situation, for which there was an agreement as to a participation in these securities.

Q. Now, deducting that 705 shares from the total previously noted, we find that Electric Bond and Share at that point emerged with 298,341 shares of common stock, did it not?

A. That is correct.

Q. And is it true that on the ledger of Electric Bond and Share Company those shares were carried at $94,-657.72?

[18152] A. That is after including this amount of the allocation of the grouping of the second preferred stock and common stock of some $34,000.

Q. Yes.

A. That is approximately correct.

Q. Of course, that $94,657 carrying value does not give effect to the approximately $4,700,000 profit which Electric Bond and Share Company realized in cash on the sale of the basket of securities to Electric Power & Light Corporation, concerning which we have already spoken. Isn't that right?

A. My recollection is that the profit as shown by the books of the company was approximately $4,200,000.

Q. We will leave the precise amount subject to the precise figures you are to furnish us.

A. That is why I indicated it was approximate.

Q. And particularly since we know that two of the figures as shown by the books of Bond and Share Company, certain adjustments must be made or allowed for in connection with reappraisals or other credits?

A. That is correct.

Q. Whether the figure be $4,200,000 as you recollect it, or $4,700,000 as I have suggested, the fact is that the carrying value of the common stock in the amount earlier indicated [18153] does not give effect in any way to that profit realized in cash, does it?

A. That is correct. I, at this point, would like to correct myself on my rough calculation. It is approximately four million six.

Q. Well, let's leave it subject to the final determination as shown by your figures.

A. Thank you.

Q. Now, Mr. Wiegers, in considering the precise amount of Bond and Share's profit realized on the sale of the basket of securities, the records of Bond and Share do not give effect, do they, to the $350,000 excess over cost realized by Electric Bond and Share Company in connection with the redemption of the notes of Dallas Railway & Terminal Company in 1926?

A. That is correct.

Q. It is correct that they do not?

A. This $4,600,000-figure does not take that difference into account.

Q. Does that figure take into account a profit realized by Electric Bond and Share Company in connection with the redemption of the collateral notes of Power Securities Corporation in the amount $36,107, concerning which you testified at page 12428 of the transcript?

[18154] A. That is correct. This indicated profit of approximately $4,600,000 represents the difference between the cash consideration plus the release in connection with the Utah service fees, and the remaining cost of the securities turned over to Electric Power & Light Corporation upon its formation and did not take into account any transactions in securities of those companies that were not involved in this turnover.

Q. And similarly that sum would not involve any profits realized by Electric Bond and Share Company through the fees it had received from the companies whose

securities were being transferred in that basket during the intervening years, nor the interest or dividends received by Bond and Share Company during the period of its ownership of those securities?

A. That is wholly correct, Mr. Berman.

April 9, 1941

HOWARD L. ALLER, President of American Power & Light Company.

CROSS-EXAMINATION

[9771] MR. BERMAN: At this time I should like to turn to a discussion of the activities of American Power & Light Company in connection with the Nebraska Power Company.

By MR. BERMAN:

Q. It is a fact, is it not, Mr. Aller, that in 1917 Electric Bond and Share Company held 33,654 shares of common stock of Omaha Electric Light & Power Company, and 4,242 shares of preferred stock of that company?

THE WITNESS: What was the first number of shares?

(The question was read by the reporter.)

THE WITNESS: Yes, sir.

By MR. BERMAN:

Q. Now certain of that common stock Electric Bond and Share Company had held since its organization in 1905, but the bulk of it was acquired by it early in 1917, isn't that a fact?

A. 9,127 shares had been acquired between 1905 and 1917, and some 24,527 shares of common stock and the 4,242 shares of preferred stock were acquired in 1917.

Q. Are you able to tell us at this time what the cost of those securities was to Electric Bond and Share Company?

MR. CALKINS: Isn't that a question for Mr. Wiegers, unless Mr. Aller has the information?

MR. BERMAN: I asked if he was able to tell us.

MR. CALKINS: Have you got that information yourself?

[9772] THE WITNESS: Is this on the record?

MR. CALKINS: Yes.

THE WITNESS: I am not able to testify from the Electric Bond and Share Company's records with certainty, of course, but we have some memoranda here which will indicate to Mr. Berman—which will probably be sufficient for his purposes—what the cost to Electric Bond and Share Company was.

By MR. BERMAN:

Q. Well, let me put the question in this way: Is it not a fact that these securities were carried on the books of Electric Bond and Share Company at the sum of $5,234,158; that their actual cost to Electric Bond and Share Company was $4,633,047?

A. We have not information with respect to the amount that Electric Bond and Share Company carried this investment on its books at, but we have figures here that would indicate to us that the cost to Electric Bond and Share Company was approximately the amount that you have stated, namely, $4,633,047.

Q. Well, suppose we assume that figure for present purposes, subject to check with Mr. Wiegers in the course of his testimony.

A. Which figure do you want to assume—both the Bond and Share figure of the amount on its books and the figure that I have stated?

[9773] Q. Suppose we assume a $4,633,000 figure, which you have indicated as the cost of the securities to Electric Bond and Share Company.

Now Electric Bond and Share Company in 1917 formed the Nebraska Power Company, did it not?

A. Yes, Electric Bond and Share Company was instrumental in the organization of the Nebraska Power Company.

Q. And about that time did Electric Bond and Share Company also convey to American Power & Light Company the securities it owned of the Omaha Electric Light & Power Company?

THE WITNESS: I guess you better read me that question.

(The question was read by the reporter.)

THE WITNESS: No, sir. The Electric Bond and Share Company conveyed the properties of the Omaha Electric Light & Power Company to the Nebraska Power Company, and the Nebraska Power Company issued its securities to the Electric Bond and Share Company.

By MR. BERMAN:

Q. And then did American Power & Light Company acquire those securities from Electric Bond and Share Company?

A. Yes.

Q. Will you tell us what American Power & Light Company gave to Electric Bond and Share Company in payment for the securities received by it of Nebraska Power & Light Company?

[9774] A. A 6 percent note in the principal amount of $5,239,108; common stock of American, $500,000 par value; $93,500 par value of 7 percent preferred stock of American, and cash in the amount of $33,336.33.

Q. Making a total principal amount of notes, par value of securities and cash paid of how much?

A. The total amount of such principal amount, par value and cash was $5,865,944.33.

Q. That sum was approximately $1,230,000 more than the cost of those securities to Electric Bond and Share Company, was it not—the cost of the Nebraska securities to the Electric Bond and Share Company?

A. That is correct, and there was very good reason therefor. The Electric Bond and Share Company having acquired these securities in part, over a period of many years past—that is, over a period of some 12 years prior to this 1917 date—and Electric Bond and Share Company having at that time less than 16 percent of the outstanding stock of American Power & Light Company, and being in a minority position, was quite properly charging American Power & Light Company for these stocks that it had acquired at a lower cost than the large volume of stocks that were acquired from the public in 1917, at a sale price to American of approximately the market price of such common stock in 1917.

[9775] THE WITNESS: Perhaps you better read it to me.

(The record was read by the reporter.)

By MR. BERMAN:

Q. As a matter of fact, Electric Bond and Share Company had re-valued its 9,127 shares of common stock, acquired prior to 1917, on its books to $140 a share, and that only made an upward adjustment of $365,080; isn't that so, Mr. Aller?

THE WITNESS: May I have that question again?

(The question was read by the reporter.)

THE WITNESS: I don't know what Electric Bond and Share Company did on its books.

By MR. BERMAN:

Q. Very well.

Now will you tell us what securities of Nebraska Power Company American Power & Light Company received for the securities issued by it to Electric Bond and Share Company, and the cash paid?

THE WITNESS: Will you read the last question, please?

(The question was read by the reporter.)

THE WITNESS: American Power & Light Company received $1,500,000 principal amount of 10-year, 5 percent notes; $3,000,000 par value of 7 percent preferred stock; $1,000,000 par value of second preferred stock, and $4,999,500 par value of common stock, making a total principal amount of par value [9776] of such securities $10,499,500.

MR. CALKINS: May we have a recess at this time?

THE EXAMINER: Yes.

(Whereupon, a short recess was taken, after which the hearing was resumed.)

MR. BERMAN: What was the last answer?

(The last answer was read by the reporter.)

By MR. BERMAN:

Q. Then the notes, preferred stock and second preferred stock of Nebraska Power Company received by American Power & Light Company approximately equalled the cost of the securities conveyed by American Power & Light Company, did they not?

A. The cost to American Power & Light Company was some $366,000 in excess of the par value and principal amount of the preferred stocks and notes of Nebraska Power Company. Of course, American Power & Light Company did not receive the par value and principal amount of the preferred and notes when they were ultimately sold.

Q. Have you included in your computation the second preferred stock of Nebraska received by American?

A. Yes.

Q. Isn't the total principal amount of second preferred and the notes $6,000,000?

A. $5,500,000, I figure it.

[9777] Q. Well, actually American received 3½ million dollars of preferred, $1,000,000 of second preferred, and 1½ million of notes, or a total of $6,000,000, did it not?

A. No, sir; it did not. It received $3,000,000 par value of preferred stock; $1,000,000 par value of second preferred stock, and $1,500,000 principal amount of notes, as I have stated previously.

Q. There was an amount of $500,000 of preferred stock held in trust for Nebraska in addition to the $3,000,000 of preferred received by American, was there not?

A. That is correct. That was treasury stock, as I understand it.

Q. So that, excluding that $500,000 of preferred, the par value of face amount of the securities received was some $300,000 less than the cost to American of the securities issued by it and the cash paid; and including the $500,000 the amount would be some $200,000 more, would it not?

A. Of course, American didn't get it. It is a little odd to compare something that American didn't receive with American's cost of the securities.

Q. Is it not a fact, as shown by Commission's Exhibit 144, that during the year 1917, the market value of American Power & Light Company's preferred stock ranged between a low of $70 a share and a high of $91, and its com-

mon stock between [9778] a low of $42 a share and a high of $86?

A. That is what that exhibit shows.

Q. American Power & Light Company, however, in entering the cost of the investment in Nebraska Power Company on its books, computed the securities issued by it at their par value, did it not?

A. They so did enter the securities issued at that time on their books at the par value of the securities so issued.

Q. And the cost at which they entered these securities also included the profit of some $1,232,000 realized by Electric Bond and Share Company, did it not?

A. Well, the items we are talking about, some $500,000 par value of common stock and only some $93,500 par value of preferred stock of American Power & Light Company issued—and I can't see how the difference between the par value of stocks issued and the market price of such stocks at any specific time could have equalled $1,232,000, whatever the $1,232,000 may be said to represent.

Q. I think you misunderstood the nature of my question. With respect to the securities issued by American Power & Light Company in addition to the preferred stock and the common stock issued by it, there were $5,239,108 principal amount of notes?

A. That is correct.

Q. And was American Power & Light Company at this time [9779] able to sell its notes on the market at their face amount, or was it not selling them at a discount?

A. The $5,239,108 principal amount of notes of American were not sold on the market, and no attempt was made to sell them.

Q. I understand that, sir; but I mean when American did issue notes or debentures, did they not always sell them at a discount?

A. I can't tell you as to whether all such notes were always sold at a discount, but these particular notes that

we are talking about were paid off in cash. There would be no discount considered in connection with them.

Q. I understand that, but—well, for example, when was the last issue of debentures issued by American Power & Light Company? There was an issue in 1916, was there not?

A. Your question was the last issue?

Q. The last issue of debentures preceding the year 1917.

A. There was an issue of 100-year debentures in 1916, which was the last sale to the public of any long-term bonds of American prior to this transaction in 1917. These notes that we have been discussing here are not of the same character at all.

Q. These debentures included a convertible feature permitting the holders to convert them into common stock at a [9780] certain ratio?

A. I don't so understand, sir. No, sir; there was no conversion privilege on these debentures that I know of.

Q. Which was the issue of debentures, part of which had been purchased by Electric Bond and Share Company, under which it converted into common stock in 1924, I believe?

A. I think you are referring to an issue of debentures with which warrants were issued, and the warrants could be converted into common stock of American Power & Light Company, the debentures being employed for payment of the purchase price of the stock.

Q. And that was the issue of 1916 which we have discussed a moment ago, was it not?

A. That is correct.

Q. Now, was American Power & Light Company able to market those debentures at par, even accompanied by those warrants for conversion into common stock?

A. These were 100-year debentures, and were offered to the stockholders of the company in 1916.

Q. At what price?

A. Subscribed by the stockholders.

Q. At what price?

A. At 93.

Q. That was the amount received by the company?

[9781] A. That is correct.

Q. Now in 1914, the company had issued $3,000,000 of 6 percent notes, one-year notes, to the Bankers Trust Company. Those were issued at a discount, were they not?

A. Yes. That was some several years prior to this period.

Q. And the one-year notes were issued in 1914, were they not?

A. Yes, one-year notes were issued in 1914, which was some 3 years prior to the time that we have been discussing.

Q. In 1916, some 7 percent, one-year notes were issued in the face amount of $2,500,000. They, too, were issued at a discount, were they not?

A. The one-year notes were sold in 1916 at practically par. There were $2,500,000 principal amount of the notes sold for $2,496,481.50, the difference probably being the cost of printing and other expenses incident to the sale.

Q. Isn't it a fact, as shown by Commission's Exhibit 135, the securities-issued exhibit of American Power & Light Company, that at no time, either prior to 1917 or subsequent to 1917, had American Power & Light Company issued either notes or debentures except at a discount from their face amount?

A. In the first place, one year following the transaction that we have been discussing, $2,500,000 of notes were issued at such a small amount below the principal amount of such notes [9782] that it constituted less than 1/10 of 1 percent difference.

Q. That is the issue you spoke of a short time ago?

A. Yes. That was the closest issue of notes to the date of the transaction we are now discussing in Nebraska, and these were sold to the Bankers Trust Company.

Q. Those were the 7 percent, one-year gold notes, were they not?

A. Those were 7 percent, one-year gold notes.

Q. The notes issued in connection with the Nebraska situation were 5 percent notes, were they not?

A. The notes that we have been discussing in Nebraska were of quite different character. They were 6 percent notes, and they were demand notes which were paid out in cash.

Q. Well, the notes of the Bankers Trust Company were paid off with cash, weren't they?

A. Yes, but they were one-year term notes.

Q. I mean, usually notes are paid off with cash, aren't they?

A. The notes that you have been referring to were paid off in cash in both cases. In one case the notes were one-year term notes, and the notes issued in connection with the Nebraska situation were not such term notes; and just about this time there were—in 1917 there were notes of American sold without a discount. There was one of the Columbia Trust Company in [9783] December 1917, which was a term note for 90 days at 6 percent, and in 1918 there were renewals of such notes.

Q. Why are those notes not shown on the tabulation you furnished to us, which is in evidence as Commission's Exhibit 133?

A. In one case they were securities issued; in the other case they were notes to banks.

Q. What about the note issued to Bankers Trust Company? They are notes, aren't they, issued to a bank?

A. On the securities-issued statement, there were included term notes of one year or longer.

Q. I am glad to learn that fact.

Now in addition to issuing its securities, Nebraska Power Company also assumed bonds of the Omaha Company in the amount of $2,776,000, did they not?

[9784] A. That is correct.

Q. At what amount did Nebraska Power Company enter the properties received from Electric Bond & Share Company in its plant account?

A. The plant account of the Nebraska Power Company as of June 1, 1917, shows $13,500,000, and this amount is an amount which has been well established. The plant account built up from that figure today is an amount which is substantially less than the reconstruction cost of such plant property. The earnings from the earliest days of the Nebraska Company have well supported such values as represented in the plant account. The earnings for the first five years were about five and a half per cent on such plant account. For the next 14 years were some 10 per cent on such plant account, and for the last five years some 8 per cent on such plant account, and we have been offered a purchase price for the Omaha properties in an amount substantially in excess of the plant account.

Q. That is all very interesting, Mr. Aller, but I take it the figure I asked for was the sum of $13,500,000?

A. That is correct.

MR. BERMAN: I ask at this time that there be received in evidence a balance sheet of Nebraska Power Company as of June 1, 1917, the date the company started in existence, which balance sheet was supplied by the respondent.

[9785] MR. CALKINS: No objection.

THE EXAMINER: Admitted.

(The balance sheet referred to above received in evidence as Commission's Exhibit No. 261.)

By MR. BERMAN:

Q. Can you tell us at what physical properties entered by Nebraska Power Company in its plant account at the sum of $13,500,000 were on the books of Omaha Electric Light & Power Company immediately prior to the transfer to Nebraska Power Company?

A. We do not have the books or balance sheets of the Omaha Electric Company, and therefore the figures are not definitely available to us.

Q. Who has the books of the Omaha Electric Light & Power Company?

A. We do not know, sir.

Q. Who was the last one that had possession of those books?

A. I don't know that, sir.

Q. Have you never made any effort to ascertain what became of the books and records of the Omaha Light & Power Company?

A. I had no occasion to do so, sir.

Q. I ask you at this time to endeavor to produce the [9786] books of the Omaha Electric Light and Power Company.

MR. CALKINS: Is there some particular thing you want, Mr. Berman?

MR. BERMAN: The books which would show the amount at which the properties of the Omaha Electric Light & Power Company were carried in its accounts prior to their conveyance to the Nebraska Power Company, and also showing the amounts at which the investments of Omaha Electric Light & Power Company were carried on its books.

At this time I ask to have received in evidence a copy of the letter of transmittal of the revenue agent at Omaha, Nebraska, inclosing his report covering an examination of the records of the Nebraska Power Company, Omaha, Nebraska, and other companies, for the years 1917 and 1920, as certified to by the Treasury Department at Washington, showing at page 5, that the plant account of Omaha Electric Light & Power Company immediately prior to its reorganization as the Nebraska Power Company, was stated at the amount of $6,883,896.37, or $6,616,103.63 less than the figure on which this plant was placed on the books of Nebraska.

(Commission's Exhibit 262, number marked for identification.)

MR. CALKINS: Same general objection as to similar reports introduced yesterday.

THE EXAMINER: Objection overruled. Admitted.

[9787] (The letter of transmittal referred to above received in evidence as Commission Exhibit 262.)

THE WITNESS: It might be of interest here, Mr. Berman, to point out that the plant account on the opening balance sheet of the Nebraska Company reflected the $500,000 par value of treasury stock which was subsequently canceled and the plant account reduced in like amount.

By MR. BERMAN:

Q. Now, there is shown on the balance sheet of Nebraska Power Company as of June 1, 1917, an item of $531,000 for securities of other companies. Will you kindly tell us what securities?

A. The Nebraska Power Company on the securities of a subsidiary, the Citizens Gas & Electric Company, and this item is in that connection.

Q. Is that the only item included?

A. I so understand.

Q. Will you tell us at what amount the stock of this Citizens Gas & Electric Company was on the books of Omaha Electric Light & Power Company immediately prior to the reorganization of that company into Nebraska Power Company?

A. I can't tell you that, sir.

Q. By reference to Commission's Exhibit 262, do you not note that the revenue agent had established that this stock was on the books of Omaha Electric Light & Power Company at [9788] the sum of $110,593.95.

THE WITNESS: Will you please read that last question back?

(Question read.)

THE WITNESS: I don't know as the revenue agent has made any definite establishment of that figure. The revenue agent has stated here that the records of the Council Bluffs Company were not available and the records of the Citizens Gas & Electric Company, prior to December, 1903, could not be located, and he further stated that the purchase of the stock of the Citizens Gas & Electric Company by Omaha Light & Power Company is shown on the exhibit. Now, he further states that this exhibit shows that the Omaha Company paid $110,593.95 for 2,495 shares of the stock of the Citizens Gas & Electric Company, and that all stock issued since that time has been through the means of stock dividends; and then there was an Exhibit No. 34 somewhere referred to that does not appear to be contained in these papers which you have handed me, so I can't tell you what he has established.

By MR. BERMAN:

Q. But you see that he lists under Omaha Electric Light & Power Company the stock of the Citizens Gas & Electric Company at the sum of $110,593.95, do you not?

A. Yes, but that is not the exhibit apparently that he referred to.

[9789] Q. But is is the exhibit that I am referring to, is it not?

A. Yes, but from your exhibit I cannot determine that he has definitely established that to be a fact.

Q. Lest you did not understand my previous request, I want to make it clear that if you are unable to locate the books of the Omaha Electric Light & Power Company to produce the information I requested, I wish you to bring in whatever books, information and memoranda in your files of these affiliated companies, which will indicate at what figures the plant and investment were carried by Omaha Electric Light & Power Company.

A. All right, sir.

THE EXAMINER: We will adjourn until 2:00 o'clock p. m.

(Whereupon, at 12:00 o'clock, noon, a recess was taken untill 2:00 o'clock p. m. of the same day.)

AFTERNOON SESSION

[9790] (Pursuant to the adjournment for the noon recess, the hearing was resumed at 2:00 o'clock p. m.)

THE EXAMINER: The hearing will resume.

Whereupon,

H. L. ALLER

resumed the witness stand, was further examined and testified as follows:

CROSS-EXAMINATION (continued)

By MR. BERMAN:

Q. The 10,000 shares of second preferred stock of Nebraska Power Company received by American Power & Light Company was convertible shares, were they not?

A. So I understand.

Q. They were convertible into first preferred stock?

A. Were convertible into preferred stock.

Q. Can you give us the provision for conversion of that stock in brief?

MR. CALKINS: I have a copy of these provisions, Mr. Berman, if you wish to see them.

MR. BERMAN: Yes, I would.

MR. CALKINS: I hand you Section 5 of the Nebraska Power Company by-laws, showing the provisions in effect from 1917 to 1925, and an amendment

in April, 1925, which was in effect until February, 1926.

[9791] MR. BERMAN: I ask that this provision of the By-Laws and the Amendment thereto be received in evidence as Commission's Exhibit 263-A and B.

MR. CALKINS: No objection.

THE EXAMINER: Admitted.

(The provision and amendment thereto referred to above were received in evidence as Commission's Exhibit 263.)

By MR. BERMAN:

Q. Subsequent to the receipt of the notes of Nebraska Power Company, its preferred and second preferred stocks in 1917, did American Power & Light Company sell the notes and the preferred and convert the second preferred into preferred and sell that to the public as well?

A. The preferred stock was sold to the public. The second preferred stock was converted to preferred stock and between 1917 and some time in 1923, the preferred stock into which the second preferred stock was converted was sold to the public. The notes were not sold to the public, but were redeemed by the Nebraska Power Company.

Q. When were those notes redeemed?

A. In June, 1919, and September, 1922.

Q. $400,000 in June, 1919, and $1,100,000 in September, 1922?

A. That is correct.

[9792] Q. When was the preferred stock originally received by American and sold to the public?

A. 29,000 of these shares of preferred stock were sold in June, 1917. It would appear that it may be necessary for us to get further information on that point.

Q. When were the balance sold?

A. I have not got the date for the balance, nor am I

absolutely certain as to the number of shares sold in June, 1917.

Q. Will you kindly provide us with a schedule showing the dates of the sale of each of all of this preferred stock and the amounts realized upon its sale?

A. Yes, sir.

Q. Will you also indicate on that schedule the amount paid to Electric Bond and Share Company as commission in connection with each of such sales, if any were paid?

A. Yes, sir.

Q. Now, will you tell us the total amount realized by American Power & Light Company on the sale of the preferred stock and the second preferred stock which were converted into preferred stock and then sold?

A. $3,594,570.86.

Q. Then you received the face amount of the notes at the time of their redemption, or $1,500,000, did you not?

A. That is correct.

[9793] Q. What was the total of the two items?

A. $5,094,570.86.

Q. And how much did that leave as applicable to American Power & Light Company's investment in Nebraska Power Company?

A. $800,585.99.

Q. Was that sum not reduced by further realizations of some kind?

A. No, sir.

Q. What shares of Nebraska Power Company does American Power & Light Company own at the present time?

A. 965,991 shares.

Q. And at what figure are they carried at the present time?

A. $809,110.43.

Q. Is it not a fact that the system cost of these shares is minus $423,786.48, and by "system cost", I mean the cost to the company first acquiring them with inter-company profits eliminated?

A. Of course, I am not in a position to testify with any degree of accuracy as to Electric Bond and Share Company's cost or as to any one else in the system other than American Power & Light Company and its own subsidiaries, but my information is that it would be indicated that Electric Bond and Share Company had sold stock to American Power & Light [9794] Company at less than its market price and had realized nothing from the transaction, and that there would be an equivalent amount of proceeds from the sale of securities which were in excess of the cost of such securities.

Q. Is it not a fact that American Power & Light Company in the U-5-S statement filed by it with this Commission states that the original system cost of these shares is the sum of minus $423,786.48?

A. We have not the U-5-S statement here, sir; so I cannot see what is in the U-5-S statement.

Q. Very well. I will have it brought up. Is it not a fact that subsequent to the 1917 transaction in which American acquired these shares from Nebraska Power Company that American never subscribed for an additional dollar of common stock of Nebraska Power Company?

A. American did not subscribe for any new issues of common stock subsequent to the original issue.

Q. Is it a fact that subsequent to American's acquisition of that common stock, Nebraska Power & Light Company sold large amounts of bonds and preferred stock to the public?

A. That is correct.

Q. Can you tell us the amount of Nebraska Power Company's funded debt at the present time?

[9795] A. $16,500,000 principal amount of first mortgage bonds and $3,500,000 principal amount of debenture bonds.

Q. What amount of preferred stock is outstanding in the hands of the public?

A. There are 22,561 shares of 6 per cent preferred

stock and 51,962 shares of 7 per cent preferred stock as of December 31, 1939.

Q. Or a total stated value of preferred stock aggregating what amount?

A. $7,452,300 par value of preferred stock.

Q. Is it not a fact that on this investment which stands on the American's books at some $809,000, and which has a system cost of $423,786 less than nothing, that American Power & Light Company has received dividends totalling approximately $19,000,000?

A. During the past 23 years, American Power & Light Company has received approximately the amount of dividends that you mentioned on the common stock owned by American.

Q. At this time I show you Item 9 of the U-5-S statement for 1939 of the American Power & Light Company which is in evidence in this proceeding as Commission's Exhibit 18-A, and tell me whether it is not a fact that American Power & Light Company has stated the cost to the system company originally acquiring the securities of Nebraska Power & Light [9796] Company at minus $423,786.48?

A. The footnote on this figure that you have mentioned is as follows: "Notes, preferred, second preferred and common stocks of this company were acquired as a group by the registrant for a consideration of $5,239,108 in cash, $93,500 par value of the registrant's preferred stock, and $500,000 par value of registrant's common stock. The amount reported in Column (G) is the mathematical result of taking the cost of such group of securities to the system company originally acquiring it (such system company having acquired and held the securities of a predecessor company for a period of years) plus additional costs incurred by the registrant, and less the proceeds received by the registrant from the sale or redemption of the senior securities originally included in such group."

Q. The figure of approximately $19,000,000 I mentioned a few minutes ago as the dividends received by Amer-

ican Power & Light Company up to the end of 1940 does not include the total return to the system from securities of the Nebraska Power Company and its predecessors, does it?

A. No, sir.

April 16, 1941

HOWARD L. ALLER, President of American Power & Light Company.

CROSS-EXAMINATION

[9991] Q. Mr. Aller, Florida Power & Light Company was formed in 1925 by Electric Bond & Share Company, was it not?

A. Yes, sir. It was organized on December 28, 1925 by American Power & Light Company, however.

Q. Now, certain assets were conveyed to Florida Power & Light Company through an intermediary named Lucian B. De Buys, isn't that so?

A. Yes, sir.

Q. Will you tell us who Mr. De Buys was?

A. Mr. De Buys was an intermediary, just as all the other intermediaries employed for the transactions.

[9992] Q. We found his name as an intermediary in a number of transactions. Was he employed by Electric Bond & Share Company as one of its personnel?

A. He was not a regular employee of Electric Bond & Share Company. He was employed for this purpose.

Q. He made his office with Electric Bond & Share Company, did he not?

A. Not that I know of, sir.

Q. Well, where was he employed?

A. I have stated that he was employed as an intermediary in these transactions.

Q. Was he an attorney? Who was he?

A. I do not know whether he was an attorney or not. I do not know Mr. De Buys.

Q. Will you kindly inquire who Mr. De Buys was, whether in fact he did not have an office with Electric Bond & Share Company in New York and whether he received a salary from Electric Bond & Share Company, or what his mode of compensation was for acting in these matters?

A. Yes, sir.

Q. Now, when Florida Power & Light Company was organized, it issued to Mr. De Buys various of its securities did it not?

A. It did.

[9993] Q. Will you tell us the securties it issued?

A. Two and a half million shares of common stock; 76,410 shares of $7 preferred stock; 50,000 shares of second preferred stock and 60,000 shares of the common stock of Utilities Land Company, the latter being issued by the Utilities Land Company.

Q. All these securities were turned over by De Buys to American Power & Light Company, were they not?

A. That is correct.

Q. These shares were no-par value shares?

A. That is correct.

Q. Will you tell us what the stated value was on the books of Florida Power & Light Company?

A. The stated value of the Florida Power & Light Company, issued to De Buys and acquired by American from De Buys, was $42,841,000.

Q. Both the $7 preferred stock and the $7 second preferred stock had a liquidating value of $100 per share, did it not?

A. That is correct.

Q. Now, if $100 per share be attributed to the $7 preferred and the second preferred, will you tell us what was the residual stated value of the common stock?

A. I do not believe that it is proper to deduct a [9994] liquidating value for a portion of the securities thus received in a group, but if we deduct from the total of $42,841,000 the liquidating value of the preferred stocks, we would de-

duct $12,841,000 and the resulting figure, when $12,841,000 is deducted from $42,841,000, is $30,000,000.

Q. Now, when $30,000,000 is divided by two and a half million shares, what does that give as the amount per share?

A. $12 per share.

Q. In addition to securities issued by it, did not Florida Power & Light Company assume a bond issue of the Peninsula Power & Light Company, which had been formed by American Power & Light Company immediately prior to the formation of Florida Power & Light Company, and which had been merged into Florida Power & Light Company at the latter's inception?

A. No, sir. Not that I know of.

Q. Well, Florida Power & Light Company was a consolidation of the Peninsula Power & Light Company, and the Southern Utilities Company, was it not?

A. Yes, sir.

Q. And had not Peninsula Power & Light Company put out a bond issue of $30,000,000 immediately upon its formation?

[9995] A. No, sir. Not as I understand. The Florida Power & Light Company issued some bonds to De Buys and these bonds were not included in the statement of stocks that I gave you a little while ago as having been issued by the Florida Company, and the Utilities Land Company to De Buys.

Q. To whom did Florida Power & Light Company issue the $30,000,000 of bonds?

A. To De Buys.

Q. And when were these bonds issued by Florida Power & Light Company to De Buys?

A. On or about the time of the organization of the Florida Company, the bonds were authorized and issued. They were issued as of January 1, 1926.

Q. And is it not a fact that the issuance of these bonds by Florida was part of the consideration pursuant to which Florida Power & Light Company was formed and agreed to issue its securities to De Buys?

A. Correct.

Q. The $30,000,000 of bonds were immediately marketed by a syndicate and sold to the public, were they not?

A. Yes, sir.

Q. And the proceeds were then distributed by De Buys according to various agreements he had entered into with American Power & Light Company and the Peninsula Power & [9996] Light Company and others?

A. That is substantially correct.

Q. Now, is it a fact that the proceeds of the bond issue, after payment of all fees, etcetera, was $26,938,125?

MR. MACLANE: What was that figure?

THE WITNESS: $26,938,125.

By MR. BERMAN:

Q. Including accrued interest?

A. We have not a record showing the exact proceeds from the sale of the bonds, sir. It was not American Power & Light Company's transaction.

Q. Wasn't De Buys American Power & Light Company's intermediary?

A. De Buys was an intermediary in the transaction and received the bonds from Florida and agreed to sell them to the syndicate and, under an agreement with American, was to pay certain moneys to American, which American received.

Q. How much was the amount received by American from De Buys out of the proceeds of the bond issue?

A. The total amount received by American Power & Light Company was $13,763,101.57.

Q. Then is it accurate to say that, in connection with the formation of Florida Power & Light Company, American Power & Light Company received securities of Florida Power & [9997] Light Company, having a stated value on the books of Florida of $42,841,000, and in addition it received in cash $13,763,101 as part of the proceeds of the sale of Florida Power & Light Company's bond issue?

A. Yes, the stated value of the securities received and the cash received from De Buys were respectively $42,841,000 and $13,763,110.

Q. Or a total of $56,604,110?

A. The total of stated value of securities and cash was $56,604,101.

Q. In addition, American Power & Light Company received 60,000 shares of the common stock of Utilities Land Company, did it not?

A. That is correct.

Q. And what was the stated value of those securities on the books of Utilities Land Company?

A. $600,000.

Q. Now, will you tell us what had been the cost to American Power & Light Company of the securities and properties conveyed by it to De Buys and by De Buys to Florida Power & Light Company in exchange for which American received the securities of Florida Power & Light Company, that we have been discussing, and the cash from the bond issue?

A. The total cost to American of the securities and [9998] properties that went into the Florida Company, was $30,637,020.02.

MR. MACLANE: Will the reporter read that figure to me please.

(Whereupon the last figure, as above recorded, was read by the reporter.)

By MR. BERMAN:

Q. Are you able to furnish us with an itemization of that figure, not for the purposes of being read orally into the record, but to be used as an exhibit?

A. No, we cannot. I can give you the items verbally, making up this total.

Q. Well, it is a somewhat lengthy list, is it not?

A. Well, there are about a dozen items.

Q. Well, suppose you do give us that list?

A. The items of American's cost incident to this transaction were as follows:

Miami Electric Light & Power Company, and Miami Water Company, $8,959,469.04.

Southern Utilities Company, $6,901,577.85.

Miami Beach Company and Miami Railway Company, $2,744,420.55.

Daytona Public Service Company, $2,086,375.33.

Miami Gas Company, $1,600,985.95.

[9999] St. Johns Electric Company, $629,805.41.

Lakeland Gas Company, $403,281.78.

Oliver Ice Company, $401,797.37.

Ormond Supply Company, $136,289.54.

Miscellaneous purchases of property, $125,712.95.

Advances for construction through the Phoenix Utility Company, $6,159,013.59.

Other expenses in connection with the investigation of the Florida properties, $441,489.53.

And certain other miscellaneous expenses in the amount of $89,240.96 less various refunds in the amount of $42,-439.83, making a total of this last item $46,801.13 net, and a total cost of $30,637,020.02.

Q. Now, will you tell us what part of that investment cost represents issuance of securities by American Power & Light Company and what part represents cash or equivalent?

A. The total of securities issued in American's cost incident to the transaction amounted to $4,186,060.

Q. Was that preferred stock or preferred income stock?

A. It was preferred stock and debentures.

MR. MACLANE: Of American Power & Light Company?

THE WITNESS: Of American Power & Light Company.

[10000] By MR. BERMAN:

Q. How much represented the issuance of debentures?

A. $1,600,000.

Q. Leaving how much for the preferred stock?

A. Leaving $2,586,060 for the preferred stock.

Q. The preferred stock was taken on the books at par value, was it?

A. This was a non-par value stock at this time and American issued 28,734 shares at $90 a share.

Q. And took it on its books at $90?

A. And took it on its books at $90 a share.

Q. How about the debentures. Were they taken on the books at the principal amount?

A. Yes, sir.

Q. With no allowance for any discount?

A. There was no discount in the debentures and the preferred stocks were taken on at $90, and the market price of the preferred stocks at that time were as follows:

In 1924 the high was 92 and in 1925 the high was 98, and the low in those two years was 84, and the closing bid and asked in 1924 was 88 bid and 90 asked, and in 1925, was 95 bid and 97 asked.

Q. That was the same preferred stock as was issued in payment for these properties, was it, Mr. Aller?

[10001] A. Yes, sir.

Q. Now, is it not a fact that in this figure of thirty million six hundred-odd thousand dollars you have given us, as representing American's investment in Florida, there are included substantial items representing advances made by American Power & Light Company to various of the predecessor companies of Florida Power & Light Company, in order to enable those companies to pay dividends to American Power & Light Company, and also various amounts charged on the books of American Power & Light Company as theoretical interest on sums advanced either for construction or for the purchase of properties?

A. Advances in substantial amount were made by American Power & Light Company to certain of the predecessors of the Florida Power & Light Company, and I do not know of any theoretical charges for interest.

Interest was charged on advances, but it was not a theoretical charge.

Q. I ask you to verify the following figures:

Was not the sum of $2,343,000 advanced to Miami Electric Light & Power Company for dividends on 10,000 shares of capital stock owned by American Power & Light Company, which dividends were paid on December 31, 1924, June 1, 1925, September 1, 1925, December 15, 1925, and December 23, 1925.

[10002] Would you like me to give the entire list and then you check them during recess?

A. I will not be able to check during this noon recess, because I will not be with my organization this noon, but I will have a check for you, of course.

Q. Was not the sum of $12,000 advanced to Miami Water Company, in order to enable Miami Water Company to pay dividends to American Power & Light Company on 1000 shares of Miami Water Company's capital stock on December 28, 1925, and December 31, 1925, in the amount of $12,000, and was the sum of $44,237 not charged on the books of American Power & Light Company representing interest on sums advanced to Miami Electric Light & Power Company and Miami Water Company, making a total to those two companies of $2,399,237, which was included by American Power & Light Company in its over-all investment figure of $30,637,000?

Similarly, was not the amount of $3,897 charged as interest on advances made to Southern Utilities Company. $106,113 as interest on investments in Miami Beach Electric Company and the Miami Beach Railway Company.

The amount of $20,677 as interest on the investment in Daytona Public Service Company.

The amount of $54,640 representing cash advances to

Florida Power & Light Company (old) in order to enable that [10003] company to pay dividends of $54,640 in December 1925 to American Power & Light Company, and the sum of $84,758 representing interest on the advances to Florida Power & Light Company (old).

The amount of $290,500 advanced to St. Johns Electric Company to enable that company to pay divdends totaling $290,500 to American Power & Light Company in December 1925, the amount of $12,047 from the Oliver Ice Company as interest on the investment, the amount of $3,942 to the Ormond Supply Company, representing a balance charged to that company for interest after certain dividends were credited against the interest, making a total of the items recited of some $2,875,000, all of which was included in the cost of American's investment in the Florida situation.

Will you endeavor to have these amounts verified or corrected, Mr. Aller?

A. I will.

Q. Now, the dividends received by American Power & Light Company from these predecessors of Florida, during the period before they were conveyed to Florida Power & Light Company, were taken into the income account of American Power & Light Company and not credited against the cost of the investment, is that not so?

Suppose you verify that and advise us whether any of [10004] those dividends were credited against the cost of the investment or whether they were all taken into the income account?

A. I will do so. I find that $187,500 of dividends were taken into American Power & Light Company's income account.

Q. Suppose you furnish us with a schedule, showing all dividends received by American Power & Light Company from the predecessors of Florida Power & Light Company (new) and the disposition made on the books of American Power & Light Company of those amounts?

A. All right, sir.

Q. Will you tell us what amount Florida Power & Light Company placed on its books as representing the value of the securities and properties received from American Power & Light Company, which you have told us cost American Power & Light Company the sum of some $30,600,000?

A. $42,841,000.

Q. Are you sure of that figure, sir?

A. The figure that I have given you was the stated value of the securities received by American Power & Light Company from the Florida Power & Light Company, as shown on the books of the Florida Power & Light Company.

The total of the item on Florida's books included the [10005] item of bonds issued to De Buys, so the total figure on Florida's books was $72,841,000.

Q. Now, the only properties received by Florida Power & Light Company at its inception were those which came over through De Buys from American Power & Light Company, isn't that so?

A. That is correct.

Q. And in addition, Florida Power & Light Company received a certain amount of cash from De Buys out of the bond issue?

A. Yes, sir.

Q. How much did it receive?

A. $12,000,000 plus certain cash of the predecessor companies in the amount of some $896,000.

Q. The fact is that Florida Power & Light Company, on its opening balance sheet, showed its total assets at the sum of $80,435,790, did it not?

A. That is correct.

Q. Now, will you tell us how much was included in that sum as representing the value of plant and investments, all of which had been received, you have said, from American Power & Light Company?

A. The amount of plant and investments shown on the opening balance sheet of the Florida Power & Light Company, [10006] was $64,523,013.32.

There were other items received, such as accounts receivable, notes receivable, materials and supplies, et cetera, totaling some $2,800,000 in addition to the cash received.

Q. Now, in the plant investment account, there were included only the assets which had come from American Power & Light Company, isn't that so?

A. That is correct.

Q. And those were the ones which you have told us had a cost on American's books of some $30,600,000?

A. That is correct.

Q. And they were set up at $64,523,013, and others at, you say, some six or seven hundred dollars additional?

A. There were other assets received, including the cash received from De Buys. The cash received from De Buys was not included in the cost to American.

Q. I understand that, but, of the assets received from American Power & Light Company, were they all placed in the plant and investment account and included at that total of $64,523,000, or were some of them distributed to other accounts which should be added to the $64,523,000?

A. All of the plant investment and other investment of the Florida Company, received from American, were entered in the account, "Plant and Investment, Expenditure Requisitions," [10007] et cetera, and that is all that was received from American, except certain current assets against which there were certain current liabilities.

Q. Florida Power & Light Company took these assets on its books at a figure some $34,000,000 greater than they were on the books of American Power & Light Company, isn't that so?

A. Approximately so. Some $33,000,000, I believe.

Q. Now, will you tell us how much was included in that sum of $64,523,000, as representing investments, as distinguished from physical property?

A. That I can't tell you, sir.

Q. Can you tell me at what figure the plant and investment, entered on the books of Florida Power & Light Company at $64,523,000, was on the books of the predecessor companies of Florida Power & Light Company, immediately prior to the transfer to Florida Power & Light Company?

A. No, sir; we can't tell you.

MR. BERMAN: At this time, I ask that there be received in evidence a copy of a document filed by American Power & Light Company under date of October 13, 1928, with the United States Treasury Department, and supporting schedules, showing on schedule No. F-1 that the total amount [10008] at which the properties received by Florida Power & Light Company was on the books of the predecessor companies was $28,970,167.43, not including the Miami Water Company and that the total amount on the books of Miami Water Company for all its properties, prior to conveyance to Florida Power & Light Company, was $1,765,954.30, or a total for the two items of $30,736,121.

MR. MACLANE: Will you please read back that last statement?

(Whereupon the last statement as above recorded was read by the reporter.)

MR. BERMAN: Which figures, I understand this schedule establishes, are the gross property figures, without any deduction for the accumulated depreciation reserve.

MR. MACLANE: May I see the exhibit, please?

MR. BERMAN: Yes, sir.

(Discussion off the record.)

MR. MACLANE: I simply call attention to the fact that the first page of this exhibit, being a photostat

of a letter of American Power & Light Company to the Commissioner of Internal Revenue, referring to this schedule F-1, states that "this schedule shows the property accounts of the company's predecessor the Florida Power & Light Company, Consumers Water Company, and St. Augustine Company, as of [10009] November 30, 1925."

It does not disclose the source of the information and that has to be left to conjecture. However, I am merely pointing that out in connection with the offer of the exhibit.

MR. BERMAN: Well, Judge MacLane does not dispute that this is a document filed by the American Power & Light Company itself?

MR. MACLANE: I am not objecting, I am not disputing it, I am simply saying that it seems to be a little ambiguous.

MR. BERMAN: I take it that, if the American Power & Light Company files a schedule and says this was the cost on the books of the predecessor companies, and so represents it to the income tax bureau of the United States Treasury, that we may accept it as a valid statement.

MR. MACLANE: I am not objecting to it, except that it does not state the facts it says it states. That is another thing we can argue, if we have to. I don't know that it is important to argue.

MR. BERMAN: It states that the total amount on the books of the predecessor companies, as of November 30, 1925—approximately a week, I believe, prior to the conveyance of these assets to Florida Power & Water Company—was the amount I have stated.

[10010] THE EXAMINER: The letter was written at that time?

MR. BERMAN: The letter is dated October 13, 1928, or three years later.

MR. MACLANE: What are we arguing about? I have made no objection. I just quoted from the first page of the letter, that is all; I made no objection.

THE EXAMINER: You offer it?

MR. BERMAN: Certainly. I ask that it be received.

THE EXAMINER: It is admitted.

(The document referred to was received in evidence as Commission's Exhibit No. 275.)

THE WITNESS: A short while ago, when you were discussing the difference between the plant and investment account of Florida Power & Light Company and the cost of certain securities and properties to American Power & Light Company, which were turned over to the Florida Company, you used a figure of some thirty-three or $34,000,000 as representing the difference.

I want to point out here that these computations do not include the items of cost to American Power & Light Company in the form of discounts and commissions and expenses incident to the sale of securities received by American from Florida, and that the excess of the Florida stated value of securities [10011] received by American and American's cost thereof, amounted to some $26,223,000.

By MR. BERMAN:

Q. Mr. Aller, what has the discount suffered by American in disposing of some of Florida's securities got to do with the difference between American's cost and the amount at which these securities were placed on the books of Florida?

On the books of American you have told us that these items had a cost value of some $30,600,000, and they were placed on the books of Florida at $64,500,000.

Now, why do you now bring in the question of the discount subsequently suffered by American Power & Light Company in selling some of Florida Power & Light Company securities?

A. These were some of the costs of American Power & Light Company not reflected in your formal computation.

MR. BERMAN: I get the idea, Mr. Aller.

THE EXAMINER: We will continue the discussion this afternoon. We will now recess until 2:00 o'clock.

(Whereupon, at 12:30 p.m., April 16, 1941, the hearing was recessed until 2:00 p.m., on the same day.)

[10012] AFTERNOON SESSION

Whereupon, at 2:00 p.m., April 16, 1941, the hearing was reconvened.

Whereupon,

H. L. ALLER

called as a witness on behalf of the Respondents, having been previously sworn, resumed the stand, was further examined and testified as follows:

CROSS-EXAMINATION (resumed)

By MR. BERMAN:

Q. Mr. Aller, I am advised that the total of the amounts shown by Commission's Exhibit No. 275 as the depreciation reserves of the predecessor companies of Florida Power & Light Company at the end of 1925, immediately prior to the transfer of these properties to Florida Power & Light Company, were some $2,308,423.

If that sum be deducted from the amount of $30,736,-112, shown as a book value on the books of the predecessors of all the properties conveyed to Florida Power & Light Company, does that not leave a net plant of $28,427,698?

A. The difference between $30,736,112 and $2,308,423 is $28,427,698.

However, I am not advised as to whether or not the figure of thirty million-odd dollars that I have just mentioned covers all of the properties which were conveyed to the [10013] Florida Power & Light Company, nor am I advised as to whether the amount of reserves on the books was the proper amount for such reserves or what such amount in reserve represented.

Q. Well, you do find on Commission's Exhibit No. 275, set forth over the signature of American Power & Light Company, the statement that the schedule shows the property accounts of the company's predecessor to Florida Power & Light Company, Utilities Land Company, Consumers Water Company and St. Augustine Company as of November 30, 1925, do you not, Mr. Aller?

A. Well, we find that in this statement, sir, but I still state that we have not had an opportunity to examine it to ascertain whether this contains all of the properties that were so turned over or not, or whether there were some properties omitted, such properties as those that were under construction or otherwise, that may have not appeared in those balance sheets.

Q. Then may we assume the correctness of these figures subject to your check and, on that assumption, is it a fact that the net plant and property of the predecessors of Florida Power & Light Company immediately prior to the transfer, was on the books of those companies at $26,427,-698?

A. The net plant and property would have to be defined [10014] as something which represented the difference between the plant account and certain reserves, to arrive at any such conclusion, and you have stated the total of plant

account and the total of reserves, which you find in this Exhibit of yours, and I have given you the difference between them.

Q. Now, is it a fact that, upon the formation of Florida Power & Light Company at the end of November 1925, immediately following the conveyance of these properties to Florida Power & Light Company, Florida Power & Light Company issued the $30,000,000 of bonds which we discussed earlier?

A. That is correct.

Q. And the fact then is, is it not, Mr. Aller, that these figures, as set forth in the statement filed by American Power & Light Company with the Internal Revenue Bureau, are correct, that Florida Power & Light Company issued $30,000,000 of bonds on a net plant of $28,427,698, immediately upon its inception, and sold those bonds to the public?

A. You will recall that Florida received some $12,000,000 in cash from the sale of those bonds, which $12,000,000 of cash was used to construct other property.

Q. Well, that scarcely in any way affects the situation with respect to the properties of Florida Power & Light Company on which these bonds were a lien. When Florida [10015] Power & Light Company put out this bond issue of $30,000,000 to the public, it had not yet received the proceeds of $12,000,000 so that the bonds were a lien only on that $28,427,000 of physical property and investments?

A. The value of these properties of the Florida Power & Light Company, as established in 1925 by the Florida Company, was sufficiently recognized by the bankers who purchased the bonds to establish that the properties at present and the value of those properties was sufficient to justify the issuance of the number of bonds which were issued.

Q. Now, respondents' Exhibit 148 is a copy of the circular which was used in the marketing of those bonds to the public, is it not, Mr. Aller?

A. That is correct.

Q. Will you kindly point to anything in that circular and in the annexed letter of Mr. S. R. Inch, setting forth

facts and circumstances concerning the Florida Company, which would in any way apprize the public to whom these bonds were being offered that these $30,000,000 of bonds were being issued against properties which had been on the books of the predecessors of Florida Power & Light Company at some twenty-eight and a half million dollars?

A. I will not take the time to read this circular [10016] here, which has been reproduced in very small form, but I am certain that these circulars issued in connection with the securities of the Florida Power & Light Company would not set forth the items of plant account which appeared on the books of certain predecessors, nor on the books of predecessors of predecessors.

Q. Nor did this circular in any way apprize the public that Florida Power & Light Company was issuing these bonds against properties which it had placed on its books at some $65,000,000, but which has cost the sponsors of Florida Power & Light Company, those who sold these properties of Florida Power & Light Company, less than $30,000,000.

A. No. If such a statement were made it would be improper, because the cost to American was in excess of $30,000,000 and the plant account of the Florida Power & Light Company reflected not only the values represented by American's cost, but also the plant account of the Florida Company contained elements which were off-set by many of the liabilities of the Florida Company, including the stock outstanding, issued in exchange for stock of the Southern Utilities Company directly to the public and not to American Power & Light Company, and many reserves and other liabilities totaling several millions of dollars, so that such a comparison, if made in a circular would have been an entirely [10017] improper comparison to make, and furthermore the circular would, of course, not have set forth the cost of certain properties to a predecessor or to predecessors of a predecessor.

These properties were acquired, some of them through trustees in bankruptcy and in other negotiations, and the

costs to the predecessor would not have much to do with the situation.

Q. Now, just to get the record straight once again, Mr. Aller, it is a fact that Florida Power & Light Company placed in its plant investment account at sixty-four million and some three hundred thousand, the assets received from American Power & Light Company, which had stood on the books of American Power & Light Company immediately prior to the transfer at some $30,000,000 isn't that so?

A. In the first place, the Florida Power & Light Company did not enter these assets on its books at $64,300,000 but at some $64,500,000, the actual figure being $64,021,-008.33.

In the next place, the cost to American Power & Light Company of these assets was $30,637,020 and the liabilities which appeared on the Florida Power & Light Company's books and were a part of the cost to the Florida Power & Light Company, although not a cost to American Power & Light Company, consisted of several million dollars of items appearing on the balance sheet of the Florida Company.

[10018] Q. But that has to do with the liabilities of Florida Power & Light Company and Florida Power & Light Company wasn't issuing these bonds against its liabilities; it was issuing them against its assets, and is it not a fact that the assets which Florida Power & Light Company had placed in its plant investment account at $64,500,000, approximately were those which appeared on the books of American at $30,678,000, approximately, the latter figure including in excess of $2,000,000, as enumerated by me earlier, for sums advanced for dividends received by American and theoretical interest charges?

A. Well, I did not check the figure of sums advanced that you have quoted, but irrespective of what, if anything that has to do with the situation, the answer to your question is no.

Q. Very well, sir.

MR. BERMAN: I ask that there be received at this time the balance sheet of Florida Power & Light Company as of December 28, 1925. Commission's Exhibit No. 276.

(The document referred to was marked for identification as Commission's Exhibit No. 276.)

THE EXAMINER: Admitted.

[10019] (The document referred to was received in evidence as Commission's Exhibit No. 276.)

MR. BERMAN: I also ask that there be received as Commission's Exhibit No. 276-A, the balance sheet of Utilities Land Company as of date of organization, December 7, 1925.

(The document referred to was marked for identification as Commission's Exhibit No. 276-A.)

THE EXAMINER: Admitted.

(The document referred to was received in evidence as Commission's Exhibit No. 276-A.)

By MR. BERMAN:

Q. Is it not a fact, Mr. Aller, that upon the receipt by American Power & Light Company of the $7 preferred stock of Florida Power & Light Company and the $7 second preferred stock, that American Power & Light Company commenced to sell to the public the $7 preferred stock and as rapidly as possible converted the second preferred into first preferred stock and sold that to the public in large measure?

A. In the first place, I do not know whether the [10020] second preferred stock was converted into first preferred stock as rapidly as was possible.

Preferred stocks were sold 1926 to 1932.

Q. Will you kindly furnish us with a tabulation showing the amount sold by or for American Power & Light Company each year from 1926 on?

When was the second preferred stock converted into preferred stock and how much remained unconverted?

A. 30,000 shares of the second preferred stock was converted into preferred stock in 1927 and 20,000 shares of this stock has not been so converted.

Q. Will you furnish us with an excerpt from the charter by-laws of the Florida Power & Light Company, setting forth the conversion feature of this second preferred stock?

A. Yes, sir.

Q. What was the total amount realized by American Power & Light Company, on disposition of the securities received from Florida Power & Light Company or De Buys, plus the cash received from De Buys in connection with the organization of Florida Power & Light Company?

A. The sum total of the cash received and the proceeds from the sale of securities received by American at the organization of Florida was $23,922,325.29.

Q. And if this had been deducted from the book amount [10021] of American Power & Light Company's investment in the Florida situation, how much does that leave as the amount attributable on the books of American to its investment in Florida?

A. $6,714,694.73.

Q. Then, of the original securities received, what part does American Power & Light Company still retain undisposed of?

A. It retains 20,000 shares of second preferred stock and the common stock of Florida Power & Light Company and the common stock of Utilities Land Company.

(Discussion off the record.)

By MR. BERMAN:

Q. When was the last of the preferred stock received by American Power & Light Company from Florida Power

& Light Company, or converted from the second preferred, disposed of by American Power & Light?

A. In 1932.

Q. Will you kindly furnish us with a schedule, setting forth the disposition of these securities in itemized forms, the amounts received and the amount of commission, if any, paid to Electric Bond & Share Company in connection with the disposition of any such securities?

A. Wasn't that covered in your former question?

Q. I don't think so.

[10022] (Discussion off the record.)

By MR. BERMAN:

Q. Now, will you also furnish us with a schedule showing the distribution by De Buys of the proceeds of the $30,000,000 bond issue?

You have so far indicated that certain amounts were received by American Power & Light Company and certain amounts by Florida Power & Light Company.

Will you show us the disposition of the remainder of the proceeds of that bond issue?

A. I will endeavor to do so.

Q. Included in American Power & Light Company's investment figure of $30,600,000 were also certain amounts paid to Phoenix Utility Company and Electric Bond & Share Company, were there not, Mr. Aller?

A. That is correct.

Q. Can you tell us how much those amounts were?

A. The amount which had been advanced to the Phoenix Utility Company for construction was $6,159,-013.59.

The amounts paid to Electric Bond & Share Company, I cannot determine at the present moment.

Q. Did that sum in excess of $6,000,000 paid to Phoenix not include fees to Phoenix over and above costs, in the amount of $225,774?

[10023] A. I know that construction fees were paid to Phoenix Utility Company in the amount of $225,744, but I do not know as to whether or not this was an amount in excess of their costs.

Q. Do you not know that these fees were paid over and above all costs of Phoenix, that the $6,000,000 figure included all the costs and expenses of Phoenix in connection with these operations and then a fee of $225,774 in addition?

A. I have stated that I did not know that to be the case at all, sir.

MR. MACLANE: Didn't I make a stipulation or some statement on that some weeks ago?

MR. BERMAN: Yes, Judge; I am satisfied with it, but Mr. Aller never has been. He has constantly disputed it.

THE WITNESS: I stated that I did not know that to be the case, sir, and I did not, and I do not.

By MR. BERMAN:

Q. Did not the investment cost of American Power & Light Company also include approximately $150,000 paid to Electric Bond & Share Company for "investigation expenses," in connection with the Florida situation?

A. I don't know just what you include in an item of $150,000. Payments were made to Electric Bond & Share [10024] Company and others, and charges incurred to reimburse it for expenses of investigating the Florida properties in the amount of some $148,000 and there were other expenses in connection with the investigation of some $45,000, but the latter were not to Electric Bond & Share Company.

Q. Did not the investment figures on the books of American also include the sum of $248,532 advanced to Mr. S. R. Inch, including interest thereon, in connection with his operations in Florida, but concerning which Amer-

ican Power & Light Company would furnish no details to the Federal Trade Commission?

A. That is a fact that American did advance some $248,000 to Mr. Inch in connection with his operations and expenses in Florida.

Q. Will you kindly furnish us with an itemization of that sum, so that we at least may see in what way that sum was expended?

A. I will endeavor to do so.

Q. Now, subsequent to the formation of Florida Power & Light Company, American Power & Light Company never purchased any additional common stock of Florida, is that not a fact?

A. That is correct.

Q. It did, however, purchase an issue of debentures [10025] of Florida Power & Light Company in 1927 in the amount of $22,000,000, did it not?

A. Yes. It purchased $22,000,000 of debentures and a substantial amount of preferred stock from the Florida Company.

Q. Is that the issue of $6 preferred stock?

A. Yes, it purchased some 10,000 shares of the $6 stock and also American purchased some 13,477 shares of $7 preferred stock.

Q. Now, that $7 preferred stock was purchased for issuance to the public and was sold to the public, was it not?

A. American still has this 13,477 shares of the $7 preferred stock and it also has the 10,000 shares of the $6 preferred stock.

Q. In connection with the acquisition of the debentures, or either of the issues of preferred stock you have mentioned, did American Power & Light Company pay any cash to Florida Power & Light Company, or were all those securities acquired in cancellation of open account indebtedness owed by Florida to American Power & Light Company?

A. American Power & Light Company paid the cash to Florida Power & Light Company, covering both of these issues of debentures and $6 preferred stock.

[10026] The cash was paid to the Florida Company and indebtedness incurred, and the indebtedness satisfied by the issuance of the securities with respect to the debentures, but the $6 preferred stock was purchased and paid for in cash in the amount of $940,000.

Q. Will you tell us how it was that American Power & Light Company came to purchase this preferred stock from Florida Power & Light Company for cash?

A. It was my understanding that Florida needed cash for its expansion and American purchased the stock from the Florida Company.

Q. Why did not American Power & Light Company purchase common stock from Florida, in order to provide it with needed capital?

A. I do not know the reasons why American purchased the preferred stock.

Q. When American Power & Light Company wished to assist Florida Power & Light Company in disposing of $22,000,000 of Florida Power & Light's floating debt, why did not American Power & Light Company accept common stock for that $22,000,000 instead of taking debentures?

A. The loans that American had outstanding were seven percent loans with Florida and American accepted six percent debentures at par in cancellation of those loans.

[10027] Just why American didn't take first mortgage bonds or common stock or preferred stock or something else, I cannot tell you.

Q. You mean American—

A. (Interposing) The facts are that American accepted $22,000,000 of debentures which were 6 percent debentures at that time.

Q. You mean American Power & Light Company had been charging Florida Power & Light Company 7 percent interest on the open account advances prior to that time?

A. The usual rate of interest, sir, I believe was 8 percent in Florida at that time or more.

Q. Was that also the usual rate of interest at No. 2 Rector Street, New York City?

A. No, the usual rate of interest was not 7 percent all over the United States, but it was the rate of interest charged in the Florida situation at that time.

MR. MACLANE: Let me get this clear, do you mean that American was charging 8 percent or 7 percent on the Florida loans?

THE WITNESS: Seven percent.

MR. MACLANE: And your statement as to the rate of interest related only to current or going rates of interest in Florida, is that right?

[10028] THE WITNESS: That is right.

MR. MACLANE: All right.

THE WITNESS: American did not charge any 8 percent interest in Florida, although 8 percent was the going rate in Florida for loans.

By MR. BERMAN:

Q. Florida's officers and directors were located at No. 2 Rector Street, New York, were they not, Mr. Aller, at that time?

A. Yes, sir, with certain exceptions.

Q. Who was the chairman of the board and who was the president?

A. Mr. Inch was the president of the Florida Power & Light Company and he was at that time in Florida all of the time.

Mr. Joe Gill was vice president of the company. He was located in Florida all of the time.

Q. Wasn't Mr. Inch a vice president of the Electric Bond & Share Company?

A. Yes, but he was located in Florida all of this time that we have been discussing.

Q. Who was chairman of the board, Mr. Aller?

A. I don't think there was any chairman of the board, sir. There was an executive committee, but there was no [10029] chairman, as far as I know.

Q. Well Mr. Mitchell was on the executive committee, was he not?

A. That is right, but he was not chairman of the board.

Q. Who was chairman of the board?

A. There was no chairman of the board.

Q. Are you ready to assume that Mr. Mitchell acted as chairman of the board?

A. No, sir. I think the president acted as the chairman of the meetings of the board, but there was no chairman of the board of directors.

Q. I thought you said the president was in Florida. Now the board meetings at that time were held in New York City, were they not?

A. I believe so. Some of them, if not all of them. I don't know whether all of them were or not.

MR. MACLANE: What time is this that Mr. Berman is referring to?

MR. BERMAN: 1925, 1926, 1927.

MR. MACLANE: Well, I have quite a distinct recollection of the minutes of board meetings held down in Miami, Florida. I may be wrong about it.

MR. BERMAN: Suppose you furnish us with a list of the [10030] board meetings which were held, as they appear in the minute books of Florida Power & Light Company, and the executive committee meetings which were held from 1925 to 1929 inclusive, and the locale of each such meeting as stated in those minutes.

Will you do that, please?

THE WITNESS: Yes, sir.

By MR. BERMAN:

Q. Now, American Power & Light Company has been receiving 6 percent on those debentures ever since 1927?

A. It has.

Q. It receives 6 percent on those debentures at the present time, doesn't it?

A. It does.

Q. How much does that give American Power & Light Company annually in the form of income?

A. $1,320,000.

Q. American Power & Light Company has never agreed to accept the debentures or securities bearing a lower rate of interest than that from Florida Power & Light Company?

A. These securities were issued to American Power and Light Company in 1926 and they are 25 year old debentures which will mature in 1951.

Q. How did it happen that American Power & Light [10031] Company did not sell those debentures as it was wont to sell its senior securities of the subsidiary companies?

A. I do not know why American did not sell them. The effects of the Florida depression in 1926 and '27 and the effect of the devastating hurricane in 1926 may have had something to do with the situation. Certainly it had a great deal to do with the growth of the Florida Power & Light Company from that time.

Q. The land boom in Florida collapsed about the end of 1926 or the beginning of 1927, did it not?

A. I think the first flutters of it were in the—the first flutters of the break occurred in the summer of 1926 and the crash in real estate values was very severe in the early months of 1927.

Q. So that is it not fair to say that the depression came to Florida some two years earlier than it did to most of the country?

A. Yes, at least two years earlier than the break in the stock market in 1929.

Q. Is it not a fact that the reason why American Power & Light Company was required to make open account advances to Florida Power & Light Company, which aggregated $22,000,000 by the end of 1926, and for which American accepted that issue of debentures, is that Florida Power & [10032] Light Company was never adequately financed at its inception?

A. No, I wouldn't say that is so, sir.

The Florida Power & Light Company was growing very rapidly. I have stated in my direct testimony that it took from a year to two years for the construction of property before this property was put in service and this construction was under way.

Because of the rapid rate of growth of the communities served by the Florida Power & Light Company in the year 1926 and '27, there was a sum total of $55,000,000 of cash spent for construction additions by the Florida Company.

The loans made to the Florida Company were a very substantial amount and the total of them was about $33,000,000 for this period of 1925 and 1926.

At the end of 1926, Florida Company owed $22,680,000 on such loans to American.

Q. And American cancelled $21,989,000 of open account indebtedness for that $22,000,000 of debentures, isn't that so?

A. It was not my understanding American cancelled $22,000,000 of indebtedness.

Q. But on this tabulation handed to me by your Staff it is indicated that the proceeds of the $22,000,000 of debentures received by American Power & Light was $21,989,000?

A. Well, there was some very small expense covering [10033] the taxes on the issuance of these securities in the

amount of $11,000, so that Florida's net proceeds were $21,-989,000. Florida bearing the taxes assessed against Florida.

Q. Do you not think that a company which was organized at the end of 1925, with the objective of engaging in extensive construction and expansion work, to the extent that it piles up indebtedness, within one year, of over $22,-000,000, was a company which was not properly financed at its inception for the work which it was intended to undertake?

A. I don't think that conclusion can be reached at all, sir. Florida was growing very rapidly and the earnings could only be realized after the property had been constructed.

A property that is growing at the rate of a hundred percent a year cannot finance, through the issuance of securities to the public, on estimated earnings, two years in advance, and I think that, under the circumstances with which the Florida Company was faced, and the rate of growth that it was experiencing, that it was quite properly financed at its inception.

Q. Of course, if the two and a half million shares of common stock issued by Florida Power & Light Company, which you have told us had a residual stated value on Florida's [10034] books of some $30,000,000, had represented actual cash invested in Florida instead of water, then Florida wouldn't have been in those financial difficulties and would not have piled up that tremendous amount of debt, isn't that a fact, Mr. Aller?

A. Well, I don't think it was represented by water, sir, and I, of course, will admit that if somebody had made a present to Florida of any number of millions of dollars, that it would have resulted in the reduction of the debt to Florida by that amount.

Q. Well, as a matter of fact, wasn't the entire investment, of course, of American Power & Light Company represented on Florida's books by the issuance of those $30,000,000 of bonds so that all the 78,410 shares of $7 pre-

ferred stock and the 50,000 shares of second preferred stock issued by Florida and received by American represented no value received by Florida whatever, and both the common and preferred was water?

A. That was not so at all, sir.

MR. BERMAN: Very well. I ask that there be received in evidence at this time the tabulation furnished me by the Respondents entitled, "Florida Power & Light Company, statement of all securities issued, retired or reacquired, December 28, 1925 to June 30, 1940."

[10035] (The document referred to was marked for identification as Commission's Exhibit No. 277.)

THE EXAMINER: Admitted.

(The document referred to was received in evidence as Commission's Exhibit No. 277.)

THE EXAMINER: Let us take a five minute recess.

(Whereupon a short recess was taken.)

August 1, 1941

JOE H. GILL, President of Electric Power & Light Corporation.

CROSS-EXAMINATION

[15051] Q. Mr. Gill, subsequent to the purchase of the securities from Southern Power & Light Company, Electric Power & Light Corporation made other purchases of securities and properties of companies which were to go into Arkansas Power & Light, Louisiana Power & Light, Mississippi Power & Light, and in addition it made loans and advances of one kind or another to the respective companies, and had other costs and expenses. At what figure do the

records of Electric Power & Light [15052] Corporation indicate the total costs, in connection with the companies and properties which came to form Arkansas, Louisiana and Mississippi, as of the time of the formation of those companies?

A. That is a difficult question to answer because, as we discussed before, it involves quite a number of transactions. I will answer it this way, in order to start:

As to the Arkansas Power & Light situation, the total of those costs were $22,940,965, plus the applicable part of the cost of the 36,993 shares of Southern Power & Light.

Now as to the Louisiana Power & Light, the comparable figure at the time of the turn-over to Louisiana Power & Light was $8,334,310, plus the applicable portion of the securities of Southern.

As to Mississippi Power & Light, it was $10,512,000, plus the approximately 21,000 shares of the Mississippi Power & Light which in turn are the proportionate part of the Southern Power & Light group applicable to Mississippi.

Q. When you refer to the applicable portion of the Southern Power & Light shares, you mean the applicable portion of the shares of Electric paid for the assets of Southern Power & Light?

A. Electric's book cost of the Southern Power & Light situation.

[15053] Q. You say in the case of Arkansas, it is the portion applicable to 36,933 shares?

A. 36,993.

Q. Shares of what?

A. Of the acquired stocks of Southern Power & Light group. We acquired 36,000—I am sorry, it is the applicable portion of the Southern Power & Light group to the 36,993 shares of Arkansas Light & Power, and just as in the Mississippi group, it is the applicable portion of the Southern Power & Light group to the 20,991 shares of the Mississippi Power & Light Company; and in the Louisiana group, it is the dollar figure stated plus the applicable portion of the

Southern Power & Light group to the acquired securities of the Louisiana companies in the Southern Power & Light group. To put it shortly, it is the sum of these figures plus the unallocated portion of the cost of Southern Power & Light.

Q. Well, Mr. Gill, it is possible, is it not, to reduce to a precise figure the allocable portion of the cost to each of the groups of Arkansas, Louisiana and Mississippi, by taking the amount at which these shares were in the investment account of Southern Power & Light, which we know, and then increasing them by the ratio between the difference at which the total group of securities was in the investment account of Southern, and the amount at which they came [15054] in the investment account of Electric. Your computations yesterday indicated that after giving effect to the debits and credits, that group of securities may be said to have come into the investment account of Electric at $9,760,250, as I recall?

A. I think that is the correct figure.

Q. And we had a break-down of those securities, as they were in the investment account of Southern, showing an aggregate as of April 1925, I think, of $6,250,000, or thereabouts, all allocated to the different securities. If we were to reduce the difference between the ledger value on Electric's books, and that on Southern's books, to a ratio, and add that ratio to each of the items as they were in the investment account of Southern, that would give us the allocable cost of each of those groups of securities which went to Arkansas, Louisiana and Mississippi, and would give an estimated cost for each of the companies, would it not?

A. Well, I think you could approach it that way; on the other hand, I can't ever say, even if we approach it that way, that that was the Electric Power & Light allocation.

Q. Well, there was no allocation—

A. (Interposing) There was no allocation by Electric Power & Light.

Q. But you would consider that a reasonable manner of [15055] approach, would you not?

A. If one wanted to use that form of approach, that would be a reasonable manner of approach.

Q. What is the total of the three groups of figures you have mentioned, without giving effect to the allocation of the Southern group?

A. I am dealing only in round hundreds. The sum of those three amounts would be $41,787,200.

Q. And that includes no part of the cost of the assets which came over from Southern Power & Light?

A. That is correct.

Q. So that to this figure must be added how much, Mr. Gill?

A. Well, if we are consistent in your approach, we would add the $9,767,200. That would give us about $51,550,000 by this approach.

Q. Is that the figure at which they are on the books of Electric, the three groups of securities?

A. I don't happen to have a compilation as of any particuler date, because these turn-over dates are different. These figures I have used are the figures which accrued to each of these situations at its turn-over date.

Q. Now—

A. (Interposing) Of course, the figures I have used [15056] are the figures taken from the investment record of Electric Power & Light Corporation.

Q. Would you supply us, Mr. Gill, with an itemization showing in detailed fashion the manner in which the figure of $22,940,000 was arrived at for Arkansas; $8,334,310 for Louisiana, and $10,512,000 for Mississippi?

A. Yes, I will make up compilations for you that lead to these figures as of the dates of the turn-over.

Now before we leave this, I would like to generally tie the over-all picture back again as I did on direct, in order that we won't apparently leave any hiatus or conflict in these figures.

You see my difficulty arises, Mr. Berman, in that you ask me to combine accounting figures at varying dates and

times, and it is always impossible to do that without misleading. To bring them all together to some point of time I would like to put in these over-all figures within which these figures moved, and that is to bring them to September 30, 1940, which is clear through, giving effect not only to the transactions leading up to the time of acquisition by each of these respective companies, but to the subsequent accounts, debits and credits, in the investment account of Electric Power & Light.

The gross total additions in the Electric Power & Light [15057] ledgers would be $60,191,183, and the proceeds and various credits which have been made total $43,576,757, less a credit for the removal of the Garland Power Development investment from this group of $200,000, leaving a net in this total group investment as of September 30, 1940, of $16,414,426.

Now my reason for doing that is a perfectly obvious one, that at the time of closing of these contracts, there were carried over liabilities which were subsequently discharged, and credits which were subsequently received, and it is always difficult in a moving transaction to take any disassociated periods of time and arrive at a figure that isn't in some minor detail, in the order of these kind of figures, possibly at any given time $150,000 to $200,000 out of account.

Now if you want these as of a particular date, all brought forward to some particular date, and I think you have to bring them to some particular date, then we can make the compilations to fit your desires, do you see?

Q. Let me ask you this, Mr. Gill:

$16,414,426 represents, as I take it, the present ledger value of Electric's investment in Arkansas, Louisiana and Mississippi?

A. That is correct, that is, as of September 30, 1940.

Q. And this represents not only the initial group investment, but all subsequent purchases and acquisitions of [15058] any kind applicable to these three companies, Arkansas, Louisiana and Mississippi?

A. Less the credits from disposition of elements or pieces of that investment in the period of time. You see, I gave you the gross over-all cost as booked, the gross over-all credits as booked, and the net book balance in the investment account remaining as of September 30, 1940.

Q. Now in these figures you gave me for Arkansas, Louisiana and Mississippi, separately, must effect be given to any dispositions which were later made before securities went into Arkansas, Louisiana and Mississippi, or can this be said actually to have been the cost of all items delivered by Electric to Arkansas, Louisiana and Mississippi, other than the applicable portion of the Southern Power & Light Company purchase?

A. The figures that I have given you are an attempt to place, to the items carried over in the case of Arkansas, for instance, under the Hatch agreement, to Arkansas Power & Light, the cost of those items on the books of Electric Power & Light involved in the turn-over, including, without assignment of value, the cost of the acquisition of the Arkansas Light & Power securities in the Southern transaction.

Both of us must recognize that there were debits and credits, shall I say, within the Hatch agreement, that flowed [15059] subsequent to the actual date of turn-over, but I tried to give effect to those as if they had occurred on the turn-over date.

Q. Now computing the cost on that basis, and adding to those the $9,767,200 representing the net cost to Electric of the securities acquired by Southern, which were conveyed to Arkansas, Louisiana and Mississippi, respectively, we get this total of $51,548,400?

A. $51,554,400.

Q. And you don't feel that we have duplicated in any way by adding to this $9,767,000, the segregated figures for each of these companies that you gave us above?

A. Not if I have read my notes correctly.

Q. These segregated figures, of course, include the loans and advances made to the predecessors of Arkansas,

Louisiana and Mississippi, and all costs of every nature, do they not?

A. They include the costs which were charged on the investment books of Electric Power & Light in connection with the situation.

Q. And they include the moneys advanced to these companies to discharge their underlying bonds preparatory to the issuance of new bonds upon the formation of the company; they include the advances made to these predecessor companies [15060] for all corporate purposes; and so forth, do they not?

A. Well, I think I might read the Arkansas items in, and then you would be able to see just what they do include.

First, without value, the 36,993 shares of Arkansas Light & Power Company common, coming over in the Southern Power & Light group; to which is added the cash cost of 913 shares of common and 1,946 shares of preferred of that company, subsequently acquired at a cost of $321,025.

Notes and loans to Arkansas Light & Power Company in the amount of $2,621,364.

The cost of purchasing 5 shares of The Pine Bluff Company preferred at $450.

The Arkansas Central Power & Light situation, including 149,990 shares of common capital stock; the Inter-City Terminal Railway Company—2,057 shares of common and $213,000 first mortgage bonds, and $1,000 principal amount of first mortgage bond of Little Rock Railway & Electric Company, which were purchased; and to which was given a credit of $145,900 for the Inter-City Terminal, not turned over; and $1,021 credit for the bond of Little Rock Railway & Electric, not turned over.

In my figures the Arkansas Central situation, so far as those elements are concerned, is taken in at $3,517,550.

Then, notes and loans accounts of the Arkansas Central [15061] Power Company, in the amount of $814,000.

Notes and loans of the Inter-City Terminal Company, and miscellaneous accounts receivable of the Inter-City Terminal Company, didn't go over.

East Arkansas Power & Light, common, at $64,000; loans at $206,000; and interest at $1,510.

Then the acquisitions that had been made by Frank A. Reid in this period at their cost—$977,550.

Q. At whose cost?

A. At the cost of acquisition to Frank Reid or to Electric Power & Light, for whom he was acting as nominee.

Consumers Ice & Light Company loans at their face—$73,000; Phoenix Utility loans for construction advances—$205,000, with interest at $1,214; advances to retire debt of Arkansas Light & Power Company, Arkansas Central Power Company, Pine Bluff Company, in the amount of $13,057,700.

The cash working capital paid in of $1,000,000.

And expenses in the amount of $80,416.

From the sum of these I derive a total of $22,940,965, plus whatever is allocable to the stock of the Arkansas Light & Power Company.

Q. Do you have an extra copy of that list at the present time, Mr. Gill?

A. No, I don't, and I would like, in any list I put in, [15062] to fix dates more definitely than they are fixed here on each of those transactions.

MR. FROMEN: May we have a recess for a few minutes at this time, Mr. Examiner?

THE EXAMINER: Yes, we will have a short recess.

(Whereupon, a short recess was taken, after which the hearing was resumed.)

THE EXAMINER: The hearing will resume.

By MR. BERMAN:

Q. Mr. Gill, what was the total price received by Electric Power & Light Corporation from Arkansas Power & Light, Louisiana Power & Light and Mississippi Power & Light for these assets which you have just enumerated?

A. Well, under date of October 8, 1926, Electric Power & Light accepted a proposal from L. Boyd Hatch, an intermediary, under which it is stated, among other things, that he would cause a company to be organized to be known as Arkansas Power & Light, and it would have an authorized capital stock of 150,000 shares of $7 preferred stock, and 100,000 shares of $6 preferred stock, and 1,300,000 shares of common, of which 96,400 shares would be presently issued and 1,000,000 shares of common stock.

He offered to deliver to Electric Power & Light 35,000 shares of the $7 preferred stock, 1,000,000 shares of the [15063] common stock, ignoring directors' shares, and cause that company to be free of debt except for current operating and contingent liabilities, and except for $18,000,000 of mortgage bonds and $1,700,000 principal amount of bonds of the Little Rock Railway & Electric Company, and $1,018,500 principal amount of the refunding bonds of the Little Rock Railway Company, and certain small real estate mortgages not named.

Q. Can't we simplify the process somewhat if, instead of your seeking to arrive at the price paid to Electric, you simply give us the price paid by each of the three companies for the assets that they acquired through the intermediaries? We then wouldn't have to work a series of calculations as to what the intermediary was to do, and what he was to deduct here and there. If we just take the price paid by Arkansas, Louisiana and Mississippi for the assets received through the intermediary, in each case what figure do we arrive at?

A. I don't know.

Q. Well, the price paid to the intermediary by each operating company consisted of certain securities, did it not; none of them paid any cash?

A. I can brief it in this way, for instance, as to the Arkansas situation.

For what Arkansas Power & Light was to receive from Hatch, and which flowed from Electric Power & Light Corporation, [15064] both of us keeping in mind that there

were certain outside securities that were not in the hands of Electric Power & Light, representing minor interests that had to be cared for in the situation, ultimately—Arkansas Power & Light was to issue 35,000 shares of $7 preferred; 999,994 shares of common—that being exclusive of directors' shares; and $18,000,000 principal amount of first mortgage, 5 percent bonds; and was to assume all contractual or other obligations of the corporation whose property was to be conveyed to Arkansas Power & Light, as well as of the individuals whose property was to be so conveyed.

Q. It started out by issuing $13,500,000 stated value of preferred and common stock, and $18,000,000 first mortgage bonds, did it not?

A. Yes, that would be right.

Q. Or a total of $31,500,000, ledger value of securities of Arkansas?

A. That would be correct.

Q. In addition, it assumed, you say, certain obligations of one kind or another, but these $31,500,000 of securities were issued to Hatch, weren't they?

A. That is correct.

Q. And actually passed over to Electric Power & Light Corporation?

[15065] A. Not altogether. The proceeds from some, the net, was passed on.

Q. Now in the case of Louisiana Power & Light, what securities did they issue to Hatch?

A. Louisiana agreed, for the assets it was to receive under the Hatch agreement, that agreement being dated August 1, 1927, to issue to or upon the order of Electric Power & Light Corporation, 30,000 shares of $6 preferred; 35,000 shares of $6 second preferred; and 999,990 shares of common, being exclusive of directors' shares; and to issue to or upon the order of Hatch, $7,500,000 principal amount of 6 percent demand notes.

Q. Or a total of $19,000,000 ledger value of securities?

A. $19,000,000 of securities.

Q. And the Mississippi Power & Light Company issued a total of how much in securities to the intermediary, Mr. Gill?

A. About $20,000,000 of securities.

Q. Then also, there were certain shares of the Utilities Realty Company, a company which received certain unimproved property out of the properties which went to each of the operating companies?

A. No, I don't think it did—it did in Louisiana.

[15066] Q. Well, where did it? Do you think the Utilities Realty was applicable to Louisiana real estate only?

A: I am checking that point.

I don't think there were any properties accepted in Mississippi.

There was an oil storage tank, I believe, accepted in Arkansas, and certain unimproved real estate that went to the Utilities Realty Company in Louisiana, which subsequently came back in part to Louisiana Power & Light.

Q. Well, overlooking for the time being the Utilities Realty Company, that gives us a total of $70,500,000, representing the book value of the securities issued to the intermediary by the three operating companies in exchange for the assets received from the intermediary, isn't that correct?

A. Yes, that is approximately the total.

THE EXAMINER: Before going further, the Commission has overruled the respondents' objection to the admission of Commission's Exhibits 794 and 795 for identification, and they are admitted.

MR. BERMAN: Well, may I ask to have them marked in evidence and incorporated in the record, Mr. Examiner?

THE EXAMINER: Yes, they are admitted.

(Commission's Exhibits 794 and 795 were received in evidence.)

[15067] By MR. BERMAN:

Q. Now to continue, Mr. Gill, if we subtract from this $70,500,000 figure the sum of $51,554,400 previously reached as the cost to Electric Power & Light Corporation of all the assets conveyed to these companies by Electric, we find an excess over such cost to Electric of these assets of how much?

A. In round figures, $19,000,000.

Q. And may it be concluded, therefore, that these companies did pay a price of some $19,000,000 in excess of Electric's cost for these assets?

A. No. In other words, what we have done here is an approximation, and the difference which you have established is a correct difference on the basis of the figures. They probably overlooked, as I pointed out at the beginning, certain minor debits and credits which consequently had to flow into this situation.

Q. Well, what do you maintain is the actual difference between Electric's cost and the cost to these three companies?

A. I maintain nothing as such.

Q. Well, of course your company—

A. (Interposing) My point is that I select no figure for the difference, and I am perfectly willing to discuss it on this, except I don't want, after having progressed as we have here on very brief and round figures, to say that [15068] that now is exactly and the difference. I am perfectly willing to say that the difference between the cost as shown on the books of Electric for the total of all of these properties, and the cost as evidenced by securities issued to the acquiring company, is approximately $19,000,000 difference, but I am not prepared to say that it was $19,000,000 difference.

Q. Your point lies or hinges on the word "approximately"?

A. That is correct.

Q. It might have been a few hundred thousand dollars one way or the other?

A. It might have had leeway either side, and I am not ready to define the leeway.

Q. Of course, you are aware, I am sure, that Electric Power & Light Corporation, in its U5B special supplement, reported to this commission that in connection with the organization of Arkansas Power & Light, Louisiana and Mississippi, those companies, as a consideration for the assets acquired, "issued their respective securities, the aggregate principal amount or stated value of which exceeded the cost to the registrant (such cost representing both cash payments and the stated value of shares of preferred and common stocks of registrant issued in connection with the transaction) of the physical properties and other net assets conveyed to these companies, by $18,455,493.20"—so that they claim a [15069] leeway there of approximately a half a million dollars?

A. That was my reason, Mr. Berman, for not desiring to say it was $19,000,000, because we had picked and dropped items in the calculation.

Q. There is no question, then, that this approximately $19,000,000, with leeway one way or the other, does represent the excess over Electric's cost of the assets conveyed?

A. Not at all, just as we stated there.

Q. Well, I thought that was what was stated there—

A. (Interposing) I said "not at all, just as we stated there".

Q. Oh, there is no doubt?

A. Not at all, just as we stated there.

Q. I am sure we both agree, I just want to make sure that the record doesn't contain any ambiguity.

"Not at all" means that there is not any doubt at all that this figure actually represents the excess of the price paid by the subsidiaries over the cost to Electric Power & Light Corporation, is that correct?

A. That is correct—just as stated in the U5B.

August 6, 1941

A. D. ROOT, financial analyst of Ebasco Services, Incorporated, testifying for American.

CROSS-EXAMINATION

[15251] A. At pages 9992 of the record, you asked us to inquire who Mr. Lucien W. DeBuys was, whether or not he had an office with Electric Bond and Share Company in New York, whether or not he received a salary from that company or what his mode of compensation was for acting as intermediary in the transfer of properties and securities.

It has been ascertained that Mr. DeBuys acted as an intermediary in certain transactions when properties were acquired by companies in the Bond and Share system in the same manner that other individuals acted as intermediaries in transactions of a similar nature and acted in a capacity that might be called a personalized account. We have been unable to ascertain how or why he was selected as such intermediary.

It has been ascertained that Mr. DeBuys was not an employee of Electric Bond and Share Company, American Power & Light Company, or of any of their subsidiaries, or of Simpson Thacher & Bartlett, and that he did not have an office with any of them at any time. We have been unable to ascertain by whom he was ever regularly employed.

We have been unable to ascertain what, if any, compensation was paid him or, if any, by whom. We have ascertained that the records of American and of Electric Bond and Share and of Simpson Thacher & Bartlett do not show any compensation as paid to Mr. DeBuys.

Q. Mr. Root, it was told to me by someone whose name I do not recollect at the moment, that Mr. DeBuys was a Greenwich Village house painter who was called in from time to time affix his name to a contract and was paid a few dollars for his trouble.

What is your knowledge on that subject?

A. I never heard of such a thing in my whole life.

Q. I do not think that you ought to get indignant.

A. I am amused at the devious sources of information you dig up.

Q. I do not know how devious it was, but you are unable, however, to tell us just who he was.

A. I do not have any idea. I have had nothing to do, personally, with the transactions in which he was interested as intermediary.

Q. So far as you know, he may have been a Greenwich Village house painter.

A. Or a Brooklyn capitalist, perhaps.

Q. Or perhaps along the same side as that Brooklyn capitalist.

August 12, 1941

[15578] By MR. BERMAN:

Q. Mr. Root, I understand you have some information for us with respect to questions asked of Mr. Aller, concerning Florida Power & Light Company, in the course of his previous testimony?

A. Yes, sir, I have.

At page 10,022, you asked Mr. Aller to furnish you with a schedule showing the distribution by L. W. DeBuys of the proceeds of the $30,000,000 Florida bond issue.

The records of L. W. DeBuys showing his receipts and disbursements in this transaction are not available, and a search for such records which has been made in response to the foregoing request has been unsuccessful in locating an accounting of such receipts and disbursements.

It is known, however, that L. W. DeBuys sold the $30,000,000 principal amount of bonds to Bonbright & Co. and other bankers for $26,775,000, plus accrued interest of $163,125 from January 1, 1926 to the dates of sale in February, 1926, and that he also received $125,000 from Florida Power & Light Company as interest for the month of

December, 1925 on $30,000,000, in accordance with his agreement. The total of such cash receipts by DeBuys is $27,063,125.

American Power & Light Company's records show that it received from DeBuys $9,887,922 as provided in its agreement with him, that it also received $3,871,306.85 from him to reimburse it for the cost of retiring bonds of one of the constituent companies and for other disbursements it made prior to receipt of the proceeds of the bonds by DeBuys, and that it also received $286,124.99 from him as interest on the $30,000,000 from December 1, 1925 to the dates of receipt of the cash in February, 1926. It has also been ascertained from the records of the several companies involved that DeBuys paid, in accordance with his agreements, $12,000,000 to Florida Power & Light Company, $10,000 to Utilities Land Company, $5,000 to Stuart Water Company and $5,000 to St. Augustine Company, and that he paid $450,000 to Electric Bond and Share Company as commission on the sale of the bonds. The total of the foregoing payments is $26,517,353.84. The balance for which we do not have details presumably represents disbursements by DeBuys for the costs of organizing the several new companies, the issuance of their securities, conveying the physical properties and securities, to the new companies, recording the new mortgage, issuance taxes, legal expenses in connection with the new bond issue and the formation of companies, and the numerous other matters involved in a transaction of this size.

* * * * * *

[15592] MR. BERMAN: Mr. Root a few moments ago read a statement in which he said that Mr. DeBuys received the proceeds of $30,000,000 principal amount of bond issue of Florida Power & Light Company. Now I think there would scarcely be any dispute that Mr. DeBuys never saw $30,000,000 in his life. Actually, this was a bookkeeping transaction; pursuant to certain contracts Florida Power & Light Company issued

$30,000,000 of bonds as well as other securities; those bonds were sold to a group of bankers, all by Electric Bond and Share and American Power & Light people, and the proceeds were distributed here, there and elsewhere, allegedly in the name of Mr. DeBuys.

Now I asked Mr. Aller to tell us where the proceeds and how the proceeds of the $30,000,000 of bonds was distributed, and I am unable to find out because their answer is that Mr. DeBuys' records are "not available."

My point is that I don't need Mr. DeBuys' records, I want Electric Bond and Share Company's and American Power & Light Company's records.

THE EXAMINER: A lot of this appears to be argument. Let's proceed by question and answer.

MR. CALKINS: May I have Mr. Berman's last statement read back, please?

(The record was read)

MR. BERMAN: I am content, Mr. Examiner, to let the record stand at this point, with the request that I have made, and I will expect to hear from the witness when he next resumes the stand as to what he is able to tell us on this score.

MR. CALKINS: Don't you think you had better state it at one place—

THE EXAMINER: Will you ask a definite question?

MR. BERMAN: It seems to me it is very definite that I have asked you to ascertain whether you are in a position to state definitely that Lucien W. DeBuys was a Greenwich Village house-painter.

THE EXAMINER: That is one question; question No. 2?

MR. BERMAN: That such Greenwich Village house-painter was called in to sign his name to these docu-

ments in the Florida transaction, and that having done so he walked out and never had any other interest in the matter, never kept any books and records concerning the matter, and knew nothing about the matter. That is question No. 2.

The third is that I ask you to ascertain whether it isn't a fact that Electric Bond and Share Company and/or American Power & Light Company kept certain records which were ostensibly the DeBuys records, in which they recorded all the details of these transactions carried on in the name of DeBuys?

Fourth, I ask you to ascertain exactly where those books and records are, and if they are not available, to give us all the details with respect to their disappearance?

THE WITNESS: I will, of course, Mr. Berman, endeavor to determine the answers to the questions which you have asked me. However, I doubt whether or not I will be able to find any more information than I have already found in that connection.

COMMISSION'S EXHIBIT 1010

AMERICAN POWER AND LIGHT COMPANY

Two Rector Street

New York

October 2, 1941

Mr. Alfred Berman, Esq.,
Securities and Exchange Commission,
Washington, D. C.

Dear Mr. Berman:

Referring to your inquiry concerning the identity of Lucian W. de Buys, I have made further investigation and am now advised that he was a personal acquaintance of a former Vice-President of Electric Bond and Share Company. Mr. de Buys was a resident of New York City at that time and an artist by profession.

Apparently his attempts to earn a living from his painting were unsuccessful and he was anxious to supplement his limited income from other sources. The former Vice-President of Electric Bond and Share Company arranged for him to act as an intermediary, at a relatively small remuneration, in certain reorganizations in the same manner as other individuals acted as intermediaries in other transactions. Mr. de Buys subsequently acted as intermediary in a similar way at the time of the organization of Florida Power & Light Company.

From what my investigation disclosed, I do not believe Mr. de Buys kept any records regarding such transactions, and he played no role other than affixing his signature to documents handed him, and routine acts in connection therewith. It is my understanding that the usual fee or compensation paid to intermediaries in other cases did not exceed $500, and I assume that the compensation paid Mr. de Buys in each case in which he acted was in that order.

His present whereabouts are unknown to me or to the former Vice-President above mentioned, and have been for many years.

Very truly yours,

D. W. JACK

Commission's Exhibit 17 in the Matter of Florida Power & Light Company et al, File No. 59-26, Securities and Exchange Commission.

COMMISSION'S EXHIBIT 1010A

ATLAS CORPORATION

ONE EXCHANGE PLACE

JERSEY CITY, N. J.

November 24, 1941

Alfred Berman, Esq.
Securities and Exchange Commission
Washington, D. C.

Dear Mr. Berman:

I have read the letter regarding Lucien W. de Buys written to you under date of October 2, 1941, by D. W. Jack of American Power & Light Company. I am the former Vice-President of Electric Bond and Share Company referred to in the letter, and Mr. Jack's statements therein as to the identity and manner of employment of Mr. de Buys are in accordance with the facts, with the following exception: Mr. de Buys was not an artist by profession in the sense of painting, so far as I know, but his training and capabilities seemed to be limited to artistic lines and such living as he made was in working in art galleries selling pictures and objects of art on a commission basis.

Very truly yours,

FLOYD B. ODLUM

March 25, 1942

EDGAR H. DIXON, Secretary and Treasurer of Electric Power & Light Corporation.

CROSS-EXAMINATION

[16633] Q. Do you have any further information for us at this point?

A. At page 15684 you requested Mr. Gill to furnish you with a statement showing how the figure of $13,057,779 on Commission's Exhibit 931, which was a statement showing Electric Power & Light Corporation investment in the Arkansas, Louisiana and Mississippi situations, was built up.

I have with me and submit to you in duplicate such statement. (Document handed to Mr. Berman)

The other open item that I have a note of has to do with the reasons for the discrepancy of $204,974.33 between the amount [16634] received by Mr. Hatch and the amounts that were paid out by Mr. Hatch as reflected by the Hatch-Arkansas reorganization account on Electric's books.

Q. Do you have the page of the transcript at which that question arose?

A. Yes, I do. That was pages 16603 and 16604.

Our search in connection with this particular item has been in many ways. We have talked with people who might have had some connection with the transaction; we have talked with Mr. Hatch himself and have asked him if he would search to see whatever records he might have available, if any.

We have read him the testimony and shown him what records we had, in an effort to revive his memory as to whether that is all that is left.

In addition to that we have tried to use our ingenuity to see what kind of items he may have been required to pay, by the nature of the agreements themselves.

In other words, he undertook to pay certain expenses of the reorganization and while our study is not complete, I think you will be interested to know that we have made some progress. For instance, we searched through our Elec-

tric Power & Light Corporation vouchers, and we found some five or six items aggregating $9,775.27 which were paid in the first instance by Electric, and which subsequently we were reimbursed for by Mr. Hatch.

[16635] We made the inquiry of the Arkansas Power & Light Company and asked if they would make a similar search.

I have a letter from Mr. Bodie, the treasurer, who tells me he has found an item of $6,750.07 in December, 1926, which covered the purchase of certain Internal Revenue Stamps for which the company was reimbursed by Mr. Hatch.

We made inquiry of the account bookkeeper of Simpson, Thacher & Bartlett to see if he might have a record of any invoices paid him by Mr. Hatch, and we find they did receive a payment of $27,000 in settlement of some legal fees.

Q. What was that?

A. Payment by Mr. Hatch to Simpson, Thacher & Bartlett for legal fees.

In other words, up to the moment we have been able to account for roughly $45,000 of this difference, and as indicated before, our search is not ended.

I should like to keep this item open temporarily until we can conclude the other avenues of our search.

Q. Well, your reference to the questions you asked Mr. Hatch, Mr. Dixon, might indicate that Mr. Hatch knew something about this transaction. Did you find he did?

A. Yes. He recalled the transaction and I was making a very diligent effort to comply with this request and find the difference.

[16636] My first request was whether he had any checks or check stubs. That would seem to me to be the obvious approach. I found he did not have that material.

Q. Let me interpose, Mr. Dixon. I think it is perfectly plain from the record where other intermediaries have come into the picture, that these intermediaries had no beneficial interest in the transactions, that none of them as such kept books or records or really knew what was going on, but all such records were kept by Electric Power & Light in the

form of the Hatch account or the name of the particular intermediary.

Are you suggesting, Mr. Dixon, that Mr. Hatch actually received properties and kept records with respect to them and paid them out and so forth in this transaction?

A. You asked Mr. Gill if he would seek to determine what had happened in this transaction. I think it is perfectly obvious in the use of an intermediary that while he may perhaps not take physical possession of property and other things, certain of the items are going through his account and if you find an indication that he was paid a certain amount of money, the obvious approach is to see if he didn't sign some checks to spend that money, and we found that he did.

It seems to me the logical approach to find what a fellow did is to ask the fellow.

Q. Was it the logical approach in this situation?

[16637] A. I thought so. Certainly Electric Power & Light had no account it maintained for his benefit.

Q. It didn't have a Hatch account?

A. Certainly it had a Hatch account, but not for this purpose.

Q. Didn't they have a Hatch account in which they listed the sums Hatch had to pay out and the sums Hatch was due to get, and which reflected various entries, moneys coming in and moneys going out?

A. It is true Electric Power & Light had a Hatch account, but not of the nature you have in mind.

We had an account to which we charged payments made for his account and transactions of that nature, but certainly I have with me physical evidence of the fact that there were certain items applicable to the transaction that were handled by Hatch other than through the Hatch Account. That was his accounting to Electric Power & Light Corporation.

Q. Then, I understand from you, Mr. Dixon, that Mr. Hatch actually played an active role in these transactions which involved a carrying out of the so-called Hatch agreement.

A. I assume he did. I have found some indication that he signed some checks and—

Q. I don't doubt he signed checks, all right. But checks drawn on what account? Not on his regular funds, were they?

[16638] A. I doubt it, and that is what I am trying to find out, what account he might have used.

Q. My only interest in this subject is not to get the record muddied or confused. In the past I think the record has clearly established that certain names were used and certain individuals were paid for the use of their names as intermediaries, DeBuys and three or four others, other than Hatch.

I understand Hatch was used in the same capacity, and yet the statement you made earlier would seem to indicate that Hatch played an active rôle and I am trying to elicit from you the information as to whether you are seeking to change the picture which the record presents as to the activities of these intermediaries, or whether you merely made a remark that had no particular significance or bearing on that point.

MR. FROMEN: May I interrupt a moment, Mr. Berman? When you speak about "active rôle" I presume you had better define what you mean by "active".

MR. BERMAN: Let us go off the record a minute.

(Discussion off the record.)

By MR. BERMAN:

Q. Mr. Dixon, as a result of the discussions we have had, am I correct in understanding that you did not mean the record to indicate that Hatch played any different rôle in this transaction than the record indicates intermediaries [16639] customarily played in this type of transaction?

A. You are correct in that statement.

Q. Very well. Now, as the matter stands, I understood you to say you feel that you have been able to derive some indication as to the expenditure of some $27,000 or $28,000 of items out of that missing $205,000. Is that it?

A. No, sir. The amount was about $45,000, I believe.

Q. You have vouchers or a schedule before you which will indicate the $45,000?

A. I have some vouchers for $9,775.27; I have a letter from the Arkansas Power & Light Company for $6,750.07, and I have some notes of a telephone conversation that my head bookkeeper had with the bookkeeper of Simpson, Thacher & Bartlett dealing with the payment to that firm by Mr. Hatch of some $27,215, or an aggregate of roughly $44,000 or $45,000.

Q. That leaves then $155,000 or $160,000 unaccounted for as yet.

A. That is correct.

Q. And you are going to continue your searches for information as to what became of the $160,000?

A. That is correct. I should like to leave that request open so that I might continue my search.

Q. Now, of course, if you referred to the Hatch account or the account in which Hatch's receipts and expenditures were [16640] entered, that should indicate to you what became of that money should it not?

A. No, sir, not on the books of Electric Power & Light.

As a matter of fact, these vouchers that I have here of some $9,775.27, none of those went through the Hatch account that we have been referring to. They were charged to "Accounts Receivable, L. B. Hatch" and did not go through the Hatch account as such.

Q. Well, I don't care where the items were entered, Mr. Dixon, but since Mr. Hatch had no beneficial interest in this transaction, somewhere somebody must be able to account for $160,000, and that somebody must be Electric Power & Light Corporation, must it not, since it is its money that is being used here?

A. Believe me, Mr. Berman, I am as anxious to find out what happened to that $160,000 as you are.

Q. I should think you would be considering it is $160,000 of corporate funds of Electric Power & Light Corporation that apparently disappeared.

A. That is why my search has been more diligent than you think is wise.

Q. I don't think any part of the search has been unwise. I am sorry it has not been more fruitful.

A. I am extremely sorry, myself.

Q. Mr. Hatch did not pocket this $160,000, did he?

[16641] A. I have no idea what happened to that $160,000, Mr. Berman.

Q. You referred to conversations you had with Mr. Hatch. I suppose you did not ask Mr. Hatch if he pocketed the $160,000. Did you ask him that question?

A. Frankly, no.

MR. FROMEN: On behalf of Mr. Hatch I might say I resent the implication that L. B. Hatch might have pocketed this money, or the inference to be drawn from Mr. Berman's question.

MR. BERMAN: It is all right with me for Mr. Fromen to say it in his own behalf or on behalf of Mr. Hatch. My question was directed to elicit the fact that nobody else thought Mr. Hatch had walked off with this money and, therefore, that Electric Power & Light must be able to account for this money.

If the reader of the record were not familiar with the facts, he might not think it strange that an individual who embarked on transactions involving $30,000,000 to $35,000,000, or whatever passed hands, might very well have emerged with $160,000, and that might not be considered an undue profit in a substantial undertaking of this kind.

We know, however, that Mr. Hatch was never considered a beneficial party and his compensation was merely nominal as was the compensation of intermediaries, so that eliminates the possibility that he was given the $160,000 for handling these [16642] transactions.

Therefore, that leaves the question as to where that $160,000 is and it would seem to me important for the corporation and its stockholders to ascertain that information.

You agree, don't you, Mr. Dixon?

THE WITNESS: Very definitely, as I stated before on the record.

It is a matter of quite some concern to me.

COMMISSION'S EXHIBIT 389

[From Samuel W. Murphy, now president of Electric Bond and Share Company, but then a member of its legal department, to Frank A. Reid, the company's general attorney. This exhibit contains a series of handwritten marginal annotations made by Mr. A. D. Root, who is referred to in the exhibit (R. 11,105-06). The annotations are printed here as footnotes.]

April 18, 1927.

Mr. Frank A. Reid,

OFFICE

In Re: Pennsylvania Reorganization

In connection with the Pennsylvania reorganization proposed by Mr. Root I have the following comments to make:—

First: As a general comment I suggest that as far as possible both reorganizations be run at the same time and in connection with each other; that is all agreements and all plans of reorganization should be laid so that no one will be able to separate one part of the reorganization from the other part. My reason for this is that while in the Pennsylvania Power & Light reorganization the increase in the Plant Account is apparently not so large, the increase of the Plant Account in the so-called Susquehanna Power & Light reorganization is tremendous, and we must not forget that in Pennsylvania the Commission has the right to approve or disapprove the acquisition of utility properties by a public utility.

I suggest, therefore, so that the Commission will find it much more difficult to unravel the cost of the various properties, that we go before them with a plan that contemplates both the transfer of certain properties to Pennsylvania Power & Light Company, as well as the formation of a new utility company, and also the transfer to the Lehigh Valley Transit Company of the railway properties, so that it will be practically impossible for anyone to find out what the cost of any individual property was or the cost of any

particular group of property. I believe that while you could get the Commission to approve your Pennsylvania Power & Light reorganization, they would not approve the Susquehanna Power & Light reorganization, but they might be willing to approve the reorganization of all your properties in Pennsylvania if it would be impossible for anyone to determine at what figure the various properties were going into the whole reorganization.[1]

Second: In addition to the above, I make the following specific comments on the various reorganization plans:—

A. PENNSYLVANIA POWER & LIGHT REORGANIZATION:

1. I suggest cancellation of all liens except East Penn Electric 6's, East Penn Electric 5's and Lykens Valley 6's. My reason for this is that if it can be done without too great a cost it will eliminate the trouble of funding property subject to prior liens under our Pennsylvania mortgage with its necessary allocation of property subject to prior liens and its confusion in the future.[2]

2. I think a decision should be made as to whether we will call the East Penn Electric Preferred Stock still outstanding or whether we will sell assets and liquidate. I suggest you have the charter checked to determine whether the cost is more if the stock is called rather than to liquidate. I also suggest for your consideration the calling of the stock in any event so that an obstreperous stockholder could not raise the question of equity in selling to ourselves.[3]

3. I suggest that it would be better to transfer the property and assets of the Williamsport Railway Company [4] and the railway property of the East Penn Electric Company to separate corporations and then transfer securities of the Lehigh Valley Transit Company rather than the railway assets above mentioned. My reason for this is an op-

[1] Isn't this a matter of presentation only?
[2] P. B. S. [P. B. Sawyer, vice president of National Power and Light Company] originally said no. He may change his mind now.
[3] This question already considered. Believed best to call.
[4] No reason for this.

erating reason, namely that Mr. Sawyer might find it better to have a number of small operating railway companies rather than have the Lehigh Valley Transit Company enter into a new field of operation. This question, however, can be better answered by Mr. Sawyer.[5]

4. I do not understand why $2,500,000 of electric light property is transferred to the East Penn Electric Company in place of $1,500,000 railway properties, although I believe that in the general mix-up we can transfer any amount of property to the East Penn Electric Company in place of the railway property and it will not make any difference. I am, however, not entirely clear as to this and suggest that you talk to Root about it.[6]

5. I notice that Root has capitalized $600,000 odd dollars of dividends which will be declared out just prior to the reorganization. This makes me wonder if perhaps some additional dividends have not been added to our cost of the property and have not been capitalized. I believe that if dividends have been capitalized we should not do so for the reason, not only that we are going before a Commission on this whole transaction and capitalization of a dividend, in my opinion, is a particularly vulnerable point of talk, but also Mr. Stebbins is having great difficulty in finding valuations equal to our cost and it looks to me as though the cost was two or three million dollars too high.[7]

6. I notice that there is an increase in the surplus of Pennsylvania Power & Light Company on this transaction which I don't understand and again I point out the fact that we will have to go before the Commission. In my opinion we should be careful not to have the surplus of the operating company increased by this transaction.[8] Otherwise we might have difficulty before the Commission.

7. Before we do anything check should be made to see that the authorized indebtedness of the Pennsylvania Power

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[5] OK if P. B. S. prefers.
[6] OK as is.
[7] This is up to P. B. S.
[8] Dividend from East Penn. Do it before the reorganization as contemplated in plan.

& Light Company is sufficient to take care of the funding operations that we desire to go through and if not that the indebtedness is properly increased. My recollection of the Pennsylvania law is that it takes 60 days to do this.[9]

8. I think that in this Pennsylvania Power & Light reorganization we should try to work in the ½ of the Scranton or Stanton (I don't know which) power house. I am referring to the power house which has been built jointly by us and the American Gas & Electric Company. It may be that we can fit this in in some such way that we can get out some common stock without increasing our valuation for bonding purposes.[10]

B. SUSQUEHANNA POWER & LIGHT REORGANIZATION.

It is very difficult for me to give you intelligent comments on this reorganization as I have been unable to lay my hands on the corporate charter and I suggest that we set Priest at making a corporate charter before we finally give our approval to this reorganization. However, the following are my comments:

1. I think that we should not only figure out whether the 7% bonds are to be called but also whether the 6% or even 5½% bonds should be called. I suggest also that a study be made as to the advisability of calling the 5% and the 4% bonds. I assume that this study will show it to be too expensive but I think we ought to know about it.[11]

2. I notice that the Harrisburg and the Lancaster Companies have outstanding $50. Preferred Stock which the plan calls for exchange in the merger. I assume that it is not contemplated to create a $50 Preferred Stock of the new company but that the exchange will be made on a basis of one share of the new for two shares of the old.[12]

3. I think the increase in Plant Account through the medium of the X Company, when the X Company will merely

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[9] OK.
[10] Sawyer says no.
[11] P. B. S. originally said no.
[12] OK. No. $50 stock to be out.

get the assets of two little companies [13] and in addition some stock, is very dangerous when you are going to appear before a Commission. I believe that we should transfer to the X Company all the assets that we can possibly lay our hands on if we are going to increase the Plant Account. I suggest that all the companies whose stock we own 100% and which have no liens on their property be transferred to the X Company, and the security of only those companies where we have a part ownership or where there is a lien attached to the property be transferred to the X Company. Otherwise the increase in Plant Account is too obvious and can be traced too easily. I believe this to be a very dangerous part of the plan and I think before anything of this sort is done we should consider it very carefully. I particularly call your attention to the fact that we do not have in this case any property owned by any individuals but it is all owned by companies. It is the first reorganization that I have had anything to do with where a step-up in Plant Account was not made with property owned by individuals who could have no balance sheet, the net effect of which was to make it impossible to trace the increase. I simply call your attention to this as apparently the Plant Account has been increased from $25,000,000 to $61,000,000 on the basis of the transfer of the assets of the Lititiz Gas Company and the Intercourse Electric Company.[14]

4. I notice some water supply companies are to go into the reorganization and I think we should consider the question as to whether we want our new company to be also in the water supply business.[15]

5. Inasmuch as under the Pennsylvania law there is a provision for the increase of the indebtedness upon a vote of the stockholders of a corporation, I suggest for your consideration that we agree as we did in Arkansas to have the

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[13] S. W. M. [Samuel W. Murphy, the author of this exhibit] apparently didn't read plan very close. It provides for X Co. securing assets of United Elec., Lititz Gas & Intercourse Elec. Co. [3 Co's]

[14] That is exactly what has been done in plan. S. W. M. missed part of it.

[15] Up to P. B. S.

new company issue the bonds and make the mortgage prior to the merger so that the merged company will take over not only the obligation but the property actually subject to the lien of the outstanding bonds.

I again desire to impress upon you the importance, in my opinion, of scrambling all these reorganizations together so that about the only thing the Pennsylvania Commission will be able to understand will be the result and not how the result was reached.[16] Root's reorganization, in my opinion, is too simple and too easy to follow, particularly the Plant Account of the Susquehanna reorganization from $25,000,000 to $61,000,000 through a merger. I also desire to call your attention to the fact that Mr. Sawyer desires to talk over this whole matter with Governor Fisher of Pennsylvania, and I believe that we do not want to put Mr. Sawyer in the embarrassing position of giving him a plan to submit to the Governor, which the Governor would approve if no figures were presented to him, and then have the Commission refuse to approve the transfer of the utility properties because of the tremendous increase in Plant Accounts. The net result of Root's plan as I see it is to have the whole Susquehanna situation cost Lehigh nothing, and while I believe that is a very salutary result in the ordinary case, I do not believe that we ought to risk obtaining this result by damaging our reputation before the Pennsylvania Commission. Such a result, in my opinion, might start an investigation into our whole rate and financial structure in Pennsylvania and lead to all sorts and kinds of consequences.[17]

I merely repeat this in order that you may know that I feel very strongly that in states where we have commissions on reorganizations we should not attempt to get too much of our cost repaid.

SWM*CCC SAMUEL W. MURPHY

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[16] This plan at its present stage is for home consumption only, and I tried to make it simple for that reason. Is not scrambling just a matter of presentation?

[17] Don't see how commission will see original costs, as they are all on Lehigh Books.

COMMISSION'S EXHIBIT 140

AMERICAN POWER & LIGHT COMPANY

71 Broadway
New York

August 6, 1917,

Electric Bond and Share Company,
71 Broadway,
New York, N. Y.

Dear Sirs:

Inasmuch as the monthly salary of the Chairman of our Board of Directors is $1,041.66 rather than $1,000.00 as stated in paragraph three subdivision D under the heading "Fiscal Agency Service" of the agreement between us dated May 1, 1917, we suggest that said paragraph be changed to read as follows:

> "The President of the Electric Bond and Share Company is now receiving from your company a salary of $1,041.66 per month as Chairman of your Board of Directors. As long as your company continues to pay this salary the amount so paid may be deducted from the payments made by you to this company, under the terms of this agreement."

If such change is satisfactory to you, will you please so notify us by letter.

Very truly yours,

AMERICAN POWER & LIGHT COMPANY,

By .....,

Treasurer.

May 1st, 1917.

American Power & Light Company,
71 Broadway,
New York, N. Y.

Dear Sirs:

We understand that your company controls, directly or indirectly, through stock ownership, the Southwestern Utilities Corporation and the Southwestern Power & Light Company, both of which will be hereinafter referred to as "Holding Companies".

That the Southwestern Power & Light Company controls, directly or indirectly, through stock ownership, the following operating companies:

Texas Power & Light Company
Fort Worth Power & Light Company
Wichita Falls Electric Company
Wichita Falls Water Company
West Texas Electric Company
Sweetwater Ice & Cold Storage Company
Eagle Pass Water Company
El Paso Gas Company
Paris Transit Company
Galveston Gas Company
International Electric Company
The Hutchinson Gas and Fuel Company
The Newton Gas and Fuel Company.

That you also control, directly or indirectly, through stock ownership, the following operating companies:

Kansas Gas & Electric Company
Pacific Power & Light Company
Portland Gas & Coke Company
Walla Walla Valley Railway Company.

All of the companies above referred to as "operating companies" will hereafter be referred to as "Subsidiaries".

If the proposal hereinafter set forth in this letter is accepted by you, it is proposed to divide the Subsidiaries for the purpose of efficient supervision and administration into groups under the following designations:

TEXAS GROUP

To include all subsidiary companies operating in Texas.

KANSAS GROUP

To include all subsidiary companies operating in Kansas.

NORTHWESTERN GROUP

To include all subsidiary companies now operating in the northwestern states.

As from time to time additional subsidiary companies are acquired, new groups, consisting of one or more companies, may be added.

Commencing May 1, 1917, we offer to take charge, under your direction, of the management of your Company, its present Holding Companies, and the management and development of all Subsidiaries, placing at your disposal the experience, advice and assistance of our entire organization. The services we propose to furnish may be divided into three classifications:

I. *Operation, Management and Supervision* (see page 5). Management of the affairs of your Company and its present Holding Companies, including accounting, office room and publicity work. Operating management of Subsidiaries including supervision of the issue of bonds and stocks of Subsidiaries, the filing of Federal and State Reports, dealings with public authorities, and, subject to your control, all operating matters connected with the extension and improvement of Subsidiaries' properties; also consulting engineering services of our engineering department.

Supervision of operation of Subsidiaries. Supervision of general matters other than those of operation.

II. *Special Engineering Services* (see page 11), including the construction of any hydro-electric or steam-electric development, transmission lines, or other additions, gas plants and extensions thereof, or reconstruction of the properties of Subsidiaries which it may not be economical to handle with the respective organizations of Subsidiaries, and which you or Subsidiaries may direct us to construct.

III. *Fiscal Agency Service* (see page 18), covering the negotiation and sale of bonds and stocks of your company, its present Holding Companies and of Subsidiaries, and assisting in the securing of loans.

I.

OPERATION, MANAGEMENT AND SUPERVISION

A. Management of the affairs of your Company and its present Holding Companies: We will supply the services of two or more of our Vice-Presidents to act as officials of your Company and its present Holding Companies, if you so desire, and of members of our accounting department to act as Secretary and Treasurer and Assistant Secretary and Assistant Treasurer of your Company and its present Holding Companies and to perform the services and duties usually performed by such officers, including keeping the books and accounts for your Company and its present Holding Companies. We will give careful attention to all publicity matters in connection with the affairs of your Company and its present Holding Companies, including all questions which may arise with the Federal Government.

B. *Operating Management of Subsidiaries:* The local manager of each Subsidiary or Group of Subsidiaries will be employed, subject to your approval and the approval of the respective Subsidiaries, and at your expense or the expense of the Subsidiaries. He will keep us advised of all matters connected with the operation and local standing of the Subsidiaries, and will carry out our instructions in the operation of the Subsidiaries, subject, of course, at all times, to the control of the Boards of Directors of your Company and Subsidiaries.

C. *Supervision of Operation of Subsidiaries:* We propose to furnish, at our expense, the services of our Operating Department, in charge of one of our Vice Presidents, including—

1. A "*Sponsor*" who will be one of our operating Specialists, who shall be known as "Sponsor for ..... Group, American Power & Light Company properties".

2. *Operating Committee* consisting of said Vice President and all Sponsors. This Committee considers and decides all ordinary operating questions calling upon the President and other members of our organization for advice and suggestions in important matters. This Committee will submit to you its recommendations as to improvements and extensions of the properties of subsidiaries, or as to the purchase of other property, with full details. It will also submit, for decision by your Board of Directors, matters of general policy, and be governed by such decision.

3. *Auditing Department*, which will supervise the accounting systems, check the monthly financial reports and vouchers of Subsidiaries, and their Federal, State and Municipal reports and tax returns. The head of this Department,

or one of his assistants, will act as Secretary and Treasurer of Subsidiaries, if desired. This Department will furnish to you monthly statements of the earnings and expenses of Subsidiaries, and from time to time such additional statements and analyses of operating matters of Subsidiaries as such Department may consider necessary, or as you may at any time request. The services of a member of this Department will be furnished to visit from time to time the general offices of subsidiaries for the purpose of checking methods and conditions and advising as to improvements.

4. *Purchasing Department* which will assist in the purchase of apparatus and material, and the routing and tracing of shipments. The subsidiaries will be included in the large general purchase contracts made by us for lamps, transformers, meters, etc., whereby, through the large volume of purchases, lower prices are secured.

5. *Engineering Department:* We will also furnish the services of our Engineering Department for all New York office consultation on operating matters. This Department is fully equipped to deal with all phases of public utility engineering, and has at present an annual arrangement with Messrs. Sargent and Lundy for the benefit of their expert advice and consultation in all matters involving steam engineering.

When the annual gross receipts for any Group exceeds $4,000,000.00, we will furnish, at our expense, the services of an engineer who shall live in one of the cities served by one of the Subsidiary Companies in the Group. He will be a member of your organization, with the title of "Chief Engineer" of the Group. He shall be satisfactory to, and subject to, the orders of the manager of the Group.

Special engineering services will be furnished as specified under the heading "Special Engineering Services" (See Page 11).

D. *Supervision of general matters other than those of operation:* We propose to furnish the services of our Corporation Department, in charge of one of our Vice Presidents, which, with the assistance of your attorneys, will supervise the calling of Stockholders, Directors and Executive Committee meetings of your Company, its present Holding Companies and Subsidiaries, the records of such meetings, the filing of reports and other dealings with Federal, State and Municipal authorities, all matters arising in connection with mortgages of your Company, its present Holding Companies or Subsidiaries, or the Trustees of such mortgages, and such other corporate matters as may arise. This Department keeps informed as to decisions and orders of the various State Public Service Commissions and rate regulation decisions of the Courts, and will from time to time advise the local manager and local attorney of each Subsidiary or Group of Subsidiaries of important decisions, and will advise with them in their dealings with State and Municipal authorities.

E. COMPENSATION:

We propose to furnish, at our expense, all ordinary and office expenses incidental to the maintenance of the above organization in our New York office, which includes all overhead expenses necessary to carry on the details of this work for the sum of $3,000. per year for services rendered the present Holding Companies and an amount equal to $2,500.00 per annum for each operating Group, plus a percentage of the gross earnings from the operation of each individual Group, exclusive of earnings between the Subsidiaries and of interest and dividends on securities of other companies

held by Subsidiaries, according to the following schedule:

1½% on first $4,000,000 of gross earnings of Group
1⅜% " next 3,000,000 " " " " "
1¼% " " 2,000,000. " " " " "
1⅛% " " 1,000,000. " " " " "
1% " all excess.

In the case of subsidiaries which purchase natural gas at wholesale for distribution and sale, the gross of such subsidiaries for the purpose of calculating compensation under this section shall be the total gross of such subsidiary less the purchase price paid for such natural gas.

You are to reimburse us at cost for all traveling and incidental expenses other than regular routine office expenses mentioned above which may be incurred from time to time by members of our organization in connection with performing the foregoing services. Payments of charges for services and reimbursement of expenses shall be made monthly for services and expenses of the preceding month.

II.

SPECIAL ENGINEERING SERVICES.

In connection with the foregoing, we will furnish to your Company, its present Holding Companies or Subsidiaries, as may be requested, the following special services:

A. *Special:* We will furnish you such engineering services (aside from office consultation on operating matters), as your Company, its present Holding Companies or Subsidiaries desire from time to time, for studies, investigations, inspections, reports, etc., at payroll cost to us for the time of the men employed (including overhead expenses and annual retainers paid

to independent consulting engineers), plus 15% of such cost. Such "overhead expenses' shall not exceed 85% of such pay-roll cost.

You are to reimburse us at cost for all traveling and incidental expenses other than regular routine office expenses mentioned above which may be incurred from time to time by members of our organization in connection with performing the foregoing services. Payments of charges for services and reimbursement of expenses shall be made monthly for services and expenses of the preceding month.

B. *Construction:* In the event of additions, extensions or reconstruction of the properties of Subsidiaries which can not be economically handled by the operating organizations of Subsidiaries, we will, when specially authorized by your Board of Directors, furnish complete engineering plans for the work, and do, or cause to be done, the construction work, for a sum equal to the cost of such construction work (including traveling, overhead and living expenses), plus a percentage varying with the cost of the work as follows:

4% on first $100,000.00 cost of the job
3½ on next 700,000.00 " " " "
3% on all excess.

Where more than one such authorization for construction in the same Group is made during any calendar year the foregoing percentages shall be computed on the aggregate cost of the work covered by all such authorizations.

III.

Fiscal Agency Service.

In connection with, and in addition to, our management proposition as above, and on the express condition that you place us in full charge (subject to your control) of all mat-

ters connected with the negotiation and sale of all the securities issued by your Company, its present Holding Companies or Subsidiaries, we propose to furnish the services of our Securities Department, in charge of one of our Vice Presidents, to act as your Fiscal Agents, including—

A. *Sale of Bonds and Stocks:* The negotiation and sale of bonds and stocks issued by your company, its present Holding Companies or Subsidiaries, subject to your approval as to prices and terms, including all details in connection with such negotiation and the delivery of the securities. Pending the sale of any of your securities they will be held for you in our safe deposit vaults without charge. This Department, through its connections both in this country and in Europe, will constantly endeavor to develop and maintain a broad market for your securities.

B. *Loans:* This Department will also assist you in securing loans.

C. *Statistical and Publicity Services* will be provided for the preparation of necessary financial and physical information regarding your property, and to prepare for publication such booklets, earnings statements and other information as you may direct.

D. *Compensation:* We propose to furnish, at our expense, all offices and ordinary office expenses incidental to the maintenance of the above organization in our New York Office, which includes all overhead expenses necessary to carry on the usual details of this work.

1. *Services:* We propose to furnish all the above for your Company, its present Holding Companies or Subsidiaries on the basis of the following percentages of the par value of the securities sold:

(a) Where securities are sold from time to time, each sale being a separate negotiation:

First Mortgage Bonds	1½%
Preferred Stock	3%

(b) Where securities are sold under an option contract covering a period of years, including in the contract a schedule of prices for the securities in each of several specified periods:

On Par Value Sold Under Contract	On Initial Sale	On Subsequent Sales
First Mortgage Bonds	1½%	½%
Preferred Stock	3%	1%

An accounting shall be rendered you promptly for each sale of securities showing gross amount received, and the net amount after deducting our compensation as above shall be handed you in New York funds. (Nothing in the above shall be held to cover stock or bonds sold by the Company to stockholders under stockholders rights of subscription).

2. *Expenses:* You are to reimburse us at cost for any printing or publicity work carried out under your instructions, and for traveling and incidental expenses, other than regular routine office expenses, which may be incurred from time to time by members of our organization in connection with performing the foregoing services. Payment of charges for services and reimbursement of expenses shall be made monthly for services and expenses of the preceding month.

3. The President of the Electric Bond and Share Company is now receiving from your Company a salary of $1,000. per month as Chairman of your Board of Directors. As long as your Company continues to pay this salary the amount so paid may be deducted from the payments made by you to this company under the terms of this agreement.

TERMINATION OF THIS AGREEMENT

This agreement may be cancelled on thirty days' notice in writing from either party on and after May 1st, 1918.

Your acceptance endorsed hereon shall constitute the agreement between us.

Yours very truly,

ELECTRIC BOND AND SHARE COMPANY,

By E. K. HALL,
Vice President.

The foregoing correctly expresses the understanding between us, and is hereby accepted.

AMERICAN POWER & LIGHT COMPANY,

By F. G. SYKES,
President.

Dated: May 10, 1917.

COMMISSION'S EXHIBIT 507

"Exhibit D"

Electric Power & Light Corporation,
71 Broadway,
New York City.

Gentlemen:

We hereby submit to you the following Proposal with respect to services to be rendered by us to you and to your operating subsidiaries:

1. We will coöperate with you so far as reasonable and proper for us so to do, to the end that each one of your subsidiary operating public utility companies will enter into a Supervision Agreement with us in the form attached, with such modification thereof or changes therein as may be mutually agreeable. As to the period or periods during which such an agreement is not in force with any such subsidiary, we will furnish services to said subsidiary if and when requested by it or by you so to do to the same extent as if said agreements had been executed, such services to be furnished subject to the direction of the respective Boards of Directors and to be charged for on a reasonable basis of compensation found mutually satisfactory. The compensation so received from the said subsidiaries shall serve as a credit against the payment of full compensation and as more fully set forth in paragraph 3 hereof.

2. We will furnish to your Company the following services:

PART I.

GENERAL SERVICES.

Subject to the control and direction of your Company, through its Board of Directors and proper officers, we will undertake to render the following services as they may be requested by you:

Executive Officers

A. Our Executive Officers will serve your Company on major problems which may arise in connection with the affairs and management of your Company.

Officers for Operating Company

b. We will assign certain of our Executive Officers or other members of our staff to serve as officers of your company, to the extent that the duties of such officers can be performed in New York City and through occasional visits outside of New York.

Fiscal Services

c. We will assist your company in regard to its financial resources and obligations, the formulation of its financial program and the securing of and arranging for loans.

Securities

d. We will serve in connection with the issuance of stocks, bonds, notes and other securities of your Company, will take charge of the drafting and printing of mortgages and trust agreements, the drafting and engraving of bonds, notes, stock certificates and other securities, and will arrange for the appointment of trustees, registrars and transfer agents and other like matters in connection with the issuance of the securities of your company. We will also provide for the safe-keeping of securities placed in our custody.

Care and Disbursement of Funds

e. We will, to the extent that your desire, arrange for the deposit of funds of your company kept in New York and the proper use of the same. When proper authority is given, we will receive and disburse funds on behalf of your company, including the payment of dividends, and will, in connection with such payments, secure and maintain lists of stockholders, prepare and file reports to the Federal Government and do all other incidental things in connection therewith; and we will likewise handle or supervise the payment from New York of interest on interest-bearing obligations.

Accounting and Auditing

f. We will supervise the accounting methods and procedure of your company, check its financial reports and supervise and assist in the preparation of its Federal, State and Municipal reports. We will also furnish your company with statements and analyses of its business and operations.

Corporate Matters

g. We will serve your company in regard to corporate matters and will supervise and assist in the preparation of corporate reports.

Corporate Meetings

h. We will attend to or assist in holding meetings of stockholders, of the Board of Directors and of the Executive Committee of your company, will prepare a program of matters requiring action at such meetings and will keep records in connection therewith, including notification to the proper parties of action taken.

Law Matters

i. We will administer the law work of your company insofar as such work is done in New York. We will supervise and assist in preparing, executing, delivering and filing or recording contracts, mortgages and similar instruments of finance and other documents duly authorized, and also in questions which may arise thereunder with trustees, transfer agents, registrars, etc.

Taxation

j. We will serve in preparing and filing Federal and State tax returns of your company and, when necessary, our representatives will, in your company's interest, appear before the tax authorities.

PART II.

SPECIAL SERVICES.

In consideration of our employment by you on the basis and for the purposes set forth under Part I of this Proposal, we will hold ourselves in readiness at all times to furnish

your company when requested, with the following Special Services:

Sale of Securities

k. We will take full charge (subject at all times to direction of your Board) of the sale, for your account, to investment bankers and other similar agencies for distribution, of all securities issued and owned by your company, including negotiations in connection therewith, and we will endeavor to maintain a favorable subsequent market for securities so sold, in order to make it possible for your company to obtain advantageous terms in connection with later issues of its securities. We will also supervise consumers' campaigns for the sale of your Capital Stock to consumers, employees and others in the territory served by subsidiaries of your company.

In connection with the sale of and market for such securities, we will prepare and issue reports, statements, circulars and general data in regard to the business and properties of your company for the information of investment bankers, the press, the general public, commissions and other public authorities.

For these services we are to receive the following commissions:

Bonds, Notes and Similar Obligations.	Percent. of Principal Amount Sold.
(a) In connection with original negotiations and sales under which a new mortgage or other similar instrument prepared by us under our direction is created or to be created covering such issue	1½
(b) For sales under an existing mortgage or other similar instrument which involve an	

original negotiation by us because of change of buyers or otherwise	1
(c) Subsequent to the original negotiations and sale under (a) or (b) above and on all additional sales of bonds, notes and other obligations issued under the same mortgage or other instrument and sold to the same buyers with whom we made the original negotiations under (a) or (b) above	½

On the sale of bonds, notes or other obligations which by their terms will mature in less than ten (10) years from the date of sale an equitable reduction of the charges set forth above will be made by us depending on the particular circumstances involved.

Non Par Value Capital Stock.	Dollars Per Share
Sales in consumers' campaigns or of issues or parts thereof	2

The foregoing commission for the sale of non par value Capital Stock applies only to shares sold at not less than $80.00 per share. The commission on shares sold at less than $80.00 per share will be fixed by agreement according to the circumstances involved in each case.

Par Value Capital Stock:

The price to be received for original issue of non par value stock may be fixed with respect to market conditions prevailing at the time of the pro-

posed sale, but the minimum sale price of the original issue of par value stock is generally fixed by statute without regard to market conditions.

In consequence of this fact and the constantly fluctuating difference between par value and fair market value, the terms under which we will negotiate the sale of your par value stock must necessarily be left open for agreement at the time of any proposed sale, with the understanding, however, that our net compensation after costs and expenses incurred by us in effecting the sale will not exceed the same amount per share as the commissions above prescribed for sales of non par value stock.

We are not, however, in the case of either non par value stock or par value stock to receive any commission on account of sale of the same to your company's stockholders under stockholders' rights of subscription or on account of sale of securities to its employees.

Examination and Reports

L. We will furnish your company with the services of engineers, accountants, rate and new business experts, lawyers and other specialists, for the examination of, and report upon new properties, projects or special problems, for which services you are to reimburse us for the cost thereof.

General Compensation

3. For the services to be rendered to you hereunder we are to receive, in addition to the payments specified in Part II above, the sum of $12,000 per annum, plus a sum equal to the difference between (a) the compensation actually received by us for services rendered all your subsidiaries and (b) the compensation we would have received from said subsidiaries if each thereof had entered into an agreement with us in the form attached.

Reimbursement of Expenses

4. Your company is to reimburse us for all expenses incurred by us on its account, including expenses of members of our organization while away from New York City in the service of your company. We are also to be reimbursed for payments advanced by us in connection with purchases made for your company.

Bills

5. Bills for services and for expenses hereunder shall be payable monthly and shall be due in New York funds within ten days after receipt of our statement.

Control of Service

6. All services to be rendered by us hereunder shall be subject to your direction.

Other Services

7. Should you have occasion to call upon us for services not herein contemplated, or through us to arrange for the services of any one else, such services and the compensation therefor shall be subject to arrangement as the occasion may arise.

Termination

8. It is understood that either one of us, by giving sixty (60) days' notice in writing to the other, may terminate this agreement, and it is further understood that the Supervision Agreements to be entered into with your subsidiary companies will be terminable on similar notice, and that whenever this agreement is so terminated you shall, upon satisfying all your obligations hereunder up to the date of such termination, be relieved of further responsibility to us on account of the guaranteed payment of compensation on account of service to subsidiaries as hereinabove set forth.

If you desire to accept this Proposal, please cause it to be executed by your officers thereunto duly authorized, and thereby constitute it an agreement between us, effective as of 1925.

Very truly yours,

ELECTRIC BOND AND SHARE COMPANY,

By .....

ATTEST:

.....

Secretary.

W[illegible] .oposal on this

day of , 1925, to be effective from and as of

, 1925.

ELECTRIC POWER & LIGHT CORPORATION,

By .....

ATTEST:

.....

Secretary.

Gentlemen:

In order to state definitely the terms of our agreement for general supervision and special services to your company, we submit herewith our formal Proposal, which upon acceptance by you will constitute a contract between us for such supervision and services.

The services to which you will become entitled, if you accept our Proposal, are divided generally as follows:

I. GENERAL SUPERVISION SERVICE: The details of this service are set forth in Part I, Sections 1 to 24, inclusive, and the compensation to be paid to us therefor is set forth in Part I, Section 25.

II. SPECIAL SERVICES: These are divided generally into—

(a) *Sale of Securities:* A statement of the services in this connection and our compensation therefor is set forth in Part II, Section 26.

(b) *Special Engineering:* A statement of the services in this connection and our reimbursement for the cost therefor is set forth in Part II, Section 27.

(c) *Construction and Reconstruction:* A statement of the services in this connection and our compensation therefor is set forth in Part II, Section 28.

(d) *Field Audits:* A statement of the services in this connection and our reimbursement for the cost therefor is set forth in Part II, Section 29.

(e) *Examinations and Reports:* A statement of the services in this connection and our reimbursement for the cost therefor is set forth in Part II, Section 30.

III. GENERAL CONDITIONS: A statement of conditions applicable to both General Supervision and Special

Services is set forth in Part III, Sections 31-32-33-34 and 35.

A brief statement describing the organization and scope of operations of Electric Bond and Share Company follows:

The Electric Bond and Share Company has for over fifteen years successfully financed and supervised the operation of public utility companies in the United States. At the present time groups associated with Electric Bond and Share Company include more than 100 companies, with a total invested capital of approximately $650,000,000., and serve a population of 7,200,000.

In order that the many and varied responsibilities incurred in supervising the affairs of these companies and in the performance of service for them may be fulfilled in the best interests of the companies and of the public served by them, Electric Bond and Share Company has developed and maintains as part of its organization a staff of specialists and experts whose services cover every ramification of public utility activities and problems, including financing, operating, legal matters, engineering in all its branches, efficiency and betterment studies, safety studies, construction, purchasing, traffic matters, insurance of all classes, inspection, accounting, appraisals and valuation, rate studies, taxation, public information, customer ownership, public regulation, negotiations with foreign governments, study of company organizations, relations with employees, preparation of statements and reports, development of new business, merchandising, and special studies and investigations.

Public utility companies require special and expert services which can be best supplied by an organization of the character outlined above. Experience has shown that as to any particular company the demands for such services fluctuate so widely from time to time as to make it uneconomical, if not impossible, for each company to maintain a permanent organization to render these services. To meet the combined requirements of this character of a large num-

ber of companies through a coöperative arrangement, one central organization such as ours becomes available to each company at reasonable cost and provides at all times the services of experts who give their whole time to public utility problems of specialized nature and who could not be carried as a part of the Operating Company's regular staff except at prohibitive expense. The entire organization of Electric Bond and Share Company, embracing the following departments and divisions—

Auditing	Insurance
Commercial and Merchandizing	Investigations
Comptroller's	Operating
Construction	Public Relations
Corporation and Law	Purchasing
Efficiency and Betterments	Rate
Engineering	Secretarial
Executive	Securities
Financial	Statistical
Foreign	Traffic
Inspection	Treasury
	Valuation

becomes, in effect, a part of the organization of each company for which it acts.

We hope that the information set forth herein is sufficiently comprehensive and that the attached Proposal will be found acceptable. A duplicate of the Proposal is enclosed for execution and return to this office.

Yours very truly,

ELECTRIC BOND AND SHARE COMPANY,

By .....

PROPOSAL

Gentlemen:

We hereby propose to furnish to your company and its subsidiaries, controlled by ownership or lease, if there be any, the supervision and other services of our organization as hereinafter outlined and described:

PART I.

GENERAL SUPERVISION SERVICE.

A. *Statement of Services to be rendered by Us.*

Subject to the control of your company through its Board of Directors and proper officers, we will undertake to render the following services as they may be requested by you.

Executive Officers

1. Our Executive Officers will serve your company on major problems which may arise in connection with the affairs and management of your company and its properties.

Officers for Operating Company

2. We will assign certain of our Executive Officers or other members of our staff to serve as officers of your company, to the extent that the duties of such officers can be performed in New York City and through visits to your offices and properties.

Operating Committee

3. We will, through our operating specialists and otherwise, keep in close touch with the affairs and problems of your company, and our Operating Committee, composed of one of our Vice Presidents and all of our operating specialists, will consult in regard to the policies and problems of your company and will apply the results of these studies to the requirements of your company.

Sponsors

One or more of our operating specialists will be assigned as Sponsor or Sponsors for your Company

and will be particularly charged with the duty of carefully and systematically scrutinizing performance and operating data and will, along with other members of our organization, be charged with the responsibility for efficient operation and proper development of your properties. In carrying out this responsibility, these Sponsors will spend such time at your office and on your properties as may be necessary.

We will, through these Sponsors and our entire organization advise your company in all matters pertaining to the operation and development of its properties, such as improvements in methods, betterments of the properties and formulation of plans for future development.

Personnel of Operating Organization

4. We will serve you in matters of personnel and organization and will, through our wide acquaintance in the public utility industry, assist in obtaining personnel. We pay special attention to developing men best fitted to fill any and all positions in the public utility field.

Fiscal Services

5. We will serve your company in regard to its financial resources and obligations, the formulation of its financial program, the establishment of credits and the securing of and arranging for loans, and will maintain a system of Annual Budgets providing for such program of extensions and improvements to your company's properties and setting forth such financial requirements as its circumstances may demand.

Securities

6. We will serve in connection with the issuance of stocks, bonds, notes and other securities of your company, will take charge of the drafting and printing of mortgages and trust agreements, the drafting and engraving of bonds, notes, stock certificates and

other securities, and will arrange for the appointment of trustees, registrars and transfer agents and other like matters in connection with the issuance of the securities of your company. We will also provide for the safe-keeping of securities placed in our custody.

Care and Disbursement of Funds

7. We will, to the extent that you desire, arrange for the deposit of funds of your company kept in New York and the proper use of the same. When proper authority is given, we will receive and disburse funds on behalf of your company, including the payment of dividends, and will, in connection with such payments, secure and maintain lists of stockholders, prepare and file reports to the Federal Government and do all other incidental things in connection therewith; and we will likewise handle or supervise the payment from New York of interest on interest-bearing obligations.

Accounting and Auditing

8. We will supervise the accounting methods and procedure of your company, check its financial reports and supervise and assist in the preparation of its Federal, State and Municipal reports. We will also furnish your company with statements and analyses of its business and operations, and will advise and assist in the standardization of accounting methods in the interest of uniform classification of accounts and the application of rulings and decisions of legally constituted accounting authorities.

Corporate Matters

9. We will serve your company in regard to corporate matters and will supervise and assist in the preparation of corporate reports.

Corporate Meetings

10. We will attend to or assist in holding meetings of stockholders, of the Board of Directors and of the Executive Committee of your company, will

prepare a program of matters requiring action at such meetings and will keep records in connection therewith, including notification to the proper parties of action taken.

Law Matters

11. We will administer the law work of your company in so far as such work is done in New York. We will supervise and assist in preparing, executing, delivering and filing or recording contracts, mortgages and similar instruments of finance and other documents duly authorized, and also in questions which may arise thereunder with trustees, transfer agents, registrars, etc.

Business Relations

12. We will serve your company in regard to matters of business policy and as to relations with the patrons of your company, and with your employes. We maintain a department for the collection and digest of the various State Utility Commission laws, and the decisions and regulations of such Commissions; state and federal legislation; court decisions, and trade and technical literature affecting the industry and its problems—all of which we will make available to your company.

Taxation

13. We will serve in preparing and filing the Federal tax returns of your company, and, when necessary, our representatives will, in your company's interest, appear before the Federal tax authorities. We will also advise your company in the preparation of state, county and municipal tax returns, and will keep it informed of decisions, orders and rulings of courts and other authorities with respect to taxation maters.

Insurance, Bonds, etc.

14. We will serve you in matters pertaining to all classes of insurance and in regard to fidelity, surety and other bonds of a similar character.

Rates and Rate-making

15. We will formulate rate schedules for your property and will advise and assist your company in their application, and our rate experts will spend such time at your office and on your properties as may be necessary. We will keep you informed of rate-making developments and our rate department will serve in connection with the handling of rate matters before State and Municipal authorities.

We maintain an extensive record and file of rates in force on public utility properties throughout the country. We make studies and comparisons of these rates and keep informed of decisions, practices and policies in connection with rate making, and will make available to your company such data and information.

New Business Merchandizing and Jobbing

16. We will serve your company in the organization and administration of its New Business, Merchandise and Jobbing Departments and in regard to the systematic and profitable conduct thereof, and our New Business and Commercial experts will spend such time at your office and on your properties as may be necessary. In connection with such matters, we keep informed of the methods, experience and policies of various operating companies and in touch with manufacturers of electric and gas appliances and apparatus, and with other sources of information. The data and information thus obtained will be made available to your company.

Statistical

17. We will gather, compile and furnish to your company valuable statistical information. We regularly compile comparative tables and charts of financial, business and operating statistics of companies supervised by us and of other public utilities, and information and data of this character will be furnished or made available to your company.

Engineering

18. We maintain a complete staff of electrical, mechanical, steam, civil, hydraulic, gas refrigeration, electric railway, construction and efficiency engineers, together with an extensive auxiliary organization. We keep informed of developments in the technical and engineering art affecting construction and operation of public utility properties and perform investigation and research work in connection therewith, and we maintain contact with the proceedings and activities of engineering societies and other technical bodies and of Federal and State governmental departments and authorities concerned with the development or regulation of public utility properties where involving technical or engineering considerations.

Our engineering staff will be available in New York to your company for consultation and advice in connection with the operation of your properties, improvements and extensions thereof and the planning of future developments. We will advise in connection with cost estimates and designs prepared by your company and will assist in the application to its properties of standardized designs and types of construction devised to promote efficiency of operation and economy of cost. We will scrutinize data received from your company and will offer recommendations for effecting improvements in efficiency and economies in operation. We will supervise the maintenance by your company of such technical and cost records in regard to its properties and their operation as may be necessary or desirable for checking performance, effecting improvements and planning future development.

Technical Information

19. We maintain a general engineering and technical information service through which we will transmit to your company information and data collected from the various companies for which we act

and from other public utility properties, from technical societies and governmental departments and from our own investigations.

Purchasing

20. We will serve your company in matters pertaining to purchasing and, where purchases can be made more advantageously by us than by your organization, we will conduct such purchases and will fulfill all functions of a purchasing organization in so far as can be done in our New York office. For purchasing in connection with construction work, see Section 28.

We maintain an information service through which we will transmit to your company information in regard to market conditions and other matters pertaining to purchasing.

Quantity Purchases

21. We regularly negotiate and place blanket contracts and orders for equipment, material, supplies, etc., generally used by public utilities, and the requirements of your company will be included therein, thereby gaining for you the benefits of favorable discounts, prices and deliveries obtainable through large combined purchases and close contact with market conditions.

Apparatus Exchange

22. We conduct for the benefit of all operating companies for which we act an Apparatus Exchange for the sale or purchase of new or second-hand apparatus and materials. This Apparatus Exchange keeps in touch with other utility companies and with the general second-hand market.

Traffic

23. We will serve your company in matters pertaining to transportation of materials and supplies, and will route and classify shipments supplied against contracts or purchase orders placed for it. We will furnish information concerning classifica-

tion and routing of commodities, insurance in transit, freight rates, proper procedure in the filing of freight claims and the checking and auditing of transportation invoices, etc.

Factory Matters

24. We will serve your company in matters pertaining to factory production, shipments, etc., of materials and apparatus ordered for your account and will give information as to the status of factory work, measures to hasten production, and, when necessary, substitutions or changes in such orders which may improve deliveries or quality of material. For factory inspection, etc., see Section 27.

Compensation to be Paid to Us for Supervision Service.

25. For services covered in the preceding Section 1 to 24, both inclusive, we are to receive the following compensation on the gross earnings of your company:

2.	% of the	first	$1,000,000	of annual	gross	earnings.	
1.9%	"	" next	2,000,000	"	"	"	"
1.8%	"	" "	4,000,000	"	"	"	"
1.7%	"	" "	6,000,000	"	"	"	"
1.6%	"	all over	13,000,000	"	"	"	"

In the event that your Company controls, by stock ownership or lease, a subsidiary Company or subsidiary Companies, earnings made in inter-company transactions shall be eliminated in computing the gross earnings on which the compensation hereunder shall be calculated.

SPECIAL SERVICES

In consideration of our employment by you on the basis and for the purposes set forth under Part I of this Proposal, we will hold ourselves in readiness at all times to furnish your company when requested, with the following special services:

Sale of Securities

26. We will take full charge (subject at all times to direction of your Board) of the sale, for your account, to investment bankers and other similar agencies for distribution, of all securities issued and owned by your company, including negotiations in connection therewith, and we will constantly endeavor, through all of the facilities at our command, including our extensive connections with investment bankers and other similar agencies, to maintain a favorable subsequent market for securities so sold, thereby making it possible for your company to obtain advantageous terms in connection with later issues of its securities. We will also supervise consumers' campaigns for the sale of your capital stock to consumers, employees and others in the territory served by your company.

In connection with the sale of and market for such securities, we will prepare and issue reports, statements, circulars and general data in regard to the business and properties of your company for the information of investment bankers, the press, the general public, commissions and other public authorities.

For these services we are to receive the following commissions:

Bonds, Notes and Similar Obligations	Percent of Principal Amount Sold
(a) In connection with original negotiations and sales under which a new mort-	

Bonds, Notes and Similar Obligations	Percent of Principal Amount Sold
gage or other similar instrument prepared by us or under our direction is created covering such issue	1½
(b) For sales under an existing mortgage or other similar instrument which involve an original negotiation by us because of change of buyers or otherwise	1
(c) Subsequent to the original negotiations and sale under (a) or (b) above and on all additional sales of bonds, notes and other obligations issued under the same mortgage or other instrument and sold to the same buyers with whom we made the original negotiations under (a) or (b) above	½

On the sale of bonds, notes or other obligations which by their terms will mature in less than ten (10) years from the date of sale an equitable reduction of the charges set forth above will be made by us depending on the particular circumstances involved in each case.

Non Par Value Capital Stock	Dollars Per Share
Sales in consumers' campaigns or of issues or parts thereof	2

The foregoing commission for the sale of non par value capital stock applies only to shares sold at not less than $80.00 per share. The commission on shares sold at less than $80.00 per share will be fixed by agreement according to the circumstances involved in each case.

Par Value Capital Stock:

The price to be received for original issue of non par value stock may be fixed with respect to market conditions prevailing at the time of the proposed sale, but the minimum sale price of the original issue of par value stock is generally fixed by statute without regard to market conditions.

In consequence of this fact and the constantly fluctuating difference between par value and fair market value, the terms under which we will negotiate the sale of your par value stock must necessarily be left open for agreement at the time of any proposed sale, with the understanding, however, that our net compensation after costs and expenses incurred by us in effecting the sale will not exceed the same amount per share as the commissions above prescribed for sales of non par value stock.

We are not, however, in the case of either non par value stock or par value stock to receive any commission on account of sale of the same to your Company's stockholders under stockholders' rights of subscription or on account of sale of securities to its employees.

Special Engineering

27. We will undertake any special engineering work which your company may require (in addition to advice and consulting assistance as specified in Part I hereof), such as preparation of designs, specifications and estimates for new developments and

for improvements or extensions to properties; investigations in regard to future development and important problems of construction, and detailed efficiency and betterment studies and experiments for the purpose of effecting improvements in methods of operation or character of service.

We will inspect materials and equipment for your company and make necessary examinations and tests in connection therewith.

For these special services you are to reimburse us for the cost thereof.

Construction and Reconstruction

28. We will, when authorized by separate agreement, procure ..... or other responsible contractor to do for your company construction or reconstruction work of any character or magnitude. So long as a construction organization is continuously maintained by such contractor on your property, new jobs may be added to existing contract as supplementary to it. Whenever the construction organization has, in its entirety, been withdrawn from your property, any work requiring its return must be covered by a new contract.

The services which will be performed in connection with such work will include organization and direction of the construction operations, field engineering, purchasing materials and equipment, obtaining construction superintendents, assembling the necessary construction forces and construction plant, keeping proper records and books of account and all other things necessary or incidental to consummation of the work.

For such construction or reconstruction work you are to reimburse to the contractor his disbursements and costs in connection therewith, and pay to

such contractor a fee based upon a percentage of the entire cost of each contract, as follows:

5% of the first $200,000;
4½% " " next 800,000;
4% " all additional cost.

Field Audits

29. We will furnish your company (in addition to advice and consulting assistance as provided in Part 1 hereof) with the services of auditors and accountants expert in public utility matters for the auditing of your books, accounts and other records, for which services you are to reimburse us for the cost thereof.

Examinations and Reports

30. We will furnish your company with the services of engineers, accountants, rate and new business experts, lawyers and other specialists, for the examination of, and report upon new properties, projects or special problems, for which services you are to reimburse us for the cost thereof.

PART III.

GENERAL CONDITIONS.

Reimbursement of Expenses

31. Your company is to reimburse us for all expenses incurred by us on its account, including expenses of members of our organization while away from New York City in the service of your company. We are also to be reimbursed for payments advanced by us in connection with purchases made for your company.

Bills

32. Bills for services and for expenses hereunder shall be payable monthly and shall be due in New York funds within ten days after receipt of our statement.

Control of Service

33. All services to be rendered by us hereunder shall be subject to your direction.

Other Services

34. Should you have occasion to call upon us for services not herein contemplated, or through us to arrange for the services of any one else, such service and the compensation therefor shall be subject to arrangement as the occasion may arise.

Termination

35. This agreement may be terminated by either party at any time on 60 days' written notice.

If you desire to accept this Proposal, please cause it to be executed by your officers thereunto duly authorized, and thereby constitute it an agreement between us, effective as of 192 .

Very truly yours,

ELECTRIC BOND AND SHARE COMPANY,

By .....

ATTEST:

.....

Secretary

WE HEREBY ACCEPT the above Proposal on this .....

..... day of ..... 192 , to be effective from and as of ..... 192 .

.....

By .....

ATTEST:

.....

Secretary

COMMISSION'S EXHIBIT 174

[From Frank Silliman, Jr., Vice President of Electric Bond and Share Company]

January Thirteenth
1928

Mr. Guy W. Talbot, President
Northwestern Electric Company
Public Service Building
Portland, Oregon

Dear Mr. Talbot:

I am just in receipt of your letter of the 6th inst. about the Supervision Agreement between Northwestern Electric Company and Electric Bond and Share Company.

The effect of the Supervision Agreement will be to add in 1928 approximately $1400.00 per month to the Operating Expenses of the Company and about $4250.00 per month to the Fixed Capital Account through Construction. This is not an onerous burden upon the Company and should be readily absorbed in the natural growth of the Company's business.

We have already waited about three years before making this Agreement and directly after our talk about it when you were in New York, I told Mr. Mitchell that we were going to make this Agreement, effective January 1st, and, a few days ago, I told Mr. Groesbeck that we would take it on the books of Electric Bond and Share Company from January 1st. I dislike to go back to them again about this as they have for a long time felt that the contract should be made.

I hope, therefore, that you will put it through as we planned when you were in New York, and to that end I am enclosing three (3) copies of the Agreement—two of which are executed on behalf of Electric Bond and Share Company, and one copy is for your office files. When the Agreement has been executed by the Northwestern Electric Com-

pany will you please send one copy to me? I suggest that you accrue for the fee on the books of Northwestern Company from January 1st, 1928 and charge 25% of it to the proper General Expense Account and 75% to Construction.

I am also sending to you, in accordance with my promise when you were here, a memorandum showing the method employed by the Kansas Gas and Electric Company in the distribution of the fee on its books between Construction and Operating Expenses. We think this is quite a satisfactory method, but you may be able to improve upon it and, if so, I would like to know what your ideas are of a better method. The Kansas method averages about 25% to Expenses and 75% to Construction in its case.

I appreciate that the Companies are going to have some temporary additional burden on account of the new office building not being fully rented, but I think you will promptly overcome this by renting the space and will, in some degree, offset this by the economies growing out of having all of your Companies in one location.

I am looking forward to seeing Mr. Platt when he comes to New York after you have settled yourself in the new building.

With kind regards, I am

Yours very truly,

FRANK SILLIMAN, JR.

FSJr/V.
Attach.

COMMISSION'S EXHIBIT 181

UTAH POWER & LIGHT COMPANY
Kearns Building
Salt Lake City, Utah

May 1, 1928

Ralph B. Feagin, Esq.,
Electric Bond and Share Co.,
2 Rector St., New York, N. Y.

Dear Mr. Feagin:

This is to acknowledge your letter of April 14th, with enclosed drafts of service contracts (a) with operating public utility companies and (b) with holding companies.

I have no further suggestions with respect to the contract with operating public utility companies. With respect to the holding company contract, I would not venture to make any suggestions had you not expressly requested them, as the matters involved are beyond the scope of my duties and experience. Since you have requested my views, however, I may say frankly that I do not like that portion of the contract which relates to "Services for Operating Subsidiaries." I refer particularly to the paragraph under this caption on the first page, to paragraph numbered 15 on page 4, to paragraph 16 on page 4, and to paragraph (a) under caption, "Non Par Value Capital Stock." Possibly, also, if my criticism has any merit, some change in the language of paragraph 22 under Part III on page 8 should also be made.

My principal and primary objection to these paragraphs is directed to the paragraph on the first page, "Services for Operating Subsidiaries." This paragraph expressly contemplates that the holding company, which, of course, has control of the operating subsidiary, shall procure that subsidiary to make a service contract with the Electric Bond and Share Company. This destroys the theoretical freedom of action of the local operating company, which it

seems to me is an important point in the investigation of these contracts by local public service commissions. We have always stressed the point in discussion of these matters before local commissions that these contracts are voluntarily entered into after full discussion by the local Boards of Directors as being for the best interests of the local companies; that they are terminable at will by those local companies, and that they constitute an asset of value to those companies for which the compensation is justified, and without the payment of which compensation by the local companies the services of the Electric Bond and Share Company could not be obtained.

This paragraph of the proposed contract, while it does not so state, leaves it clearly open to inference that the holding company will see to it that the operating company makes such a contract. The holding company will obviously do so in its own interest because otherwise—while in form it is optional—it would doubtless be required to itself assume the payments to be made by the operating company in order to secure those services for that company. Furthermore, the contract discloses on its face that it is not necessary for the operating company to make these payments to secure these services for if it does not do so the holding company will assume such payments and the operating company get the benefit of the services for nothing. I think from the standpoint of justification before local commissions that this paragraph materially weakens the setup presented by the present existing and proposed draft operating service contracts.

I have nothing particular to suggest in lieu of this paragraph except its virtual elimination. It would seem to me that it might be safely assumed by the Electric Bond and Share Company that when it contracts with holding companies that the operating subsidiaries will make service contracts, and the Electric Bond and Share Company, of course, has the privilege of refusing the contract of the holding company if the operating companies do not make such

contracts. If the above general criticism is sound, would it not be sufficient to put in a brief paragraph under this heading, "Services for Operating Subsidiaries," to the effect that the Electric Bond and Share Company has made, or there are in progress of negotiation, contracts with the operating subsidiaries for the services mentioned in "The Service Contract with Operating Public Utility Companies," and that the services to be rendered under the holding company contract are in addition to, and not a part of, the services under the contract with the operating companies.

My objection to paragraph 15 on page 4 is related to the above objection. It is simply to the psychological or I might say political effect of the superimposition of an additional fee based on gross earnings of subsidiaries over and above the fee charged to the subsidiaries likewise based on gross earnings. This objection may or may not be valid. It would seem to be more consistent if the percentage were higher and based upon the earnings of the holding company alone, so as to divorce the holding company from the operating company. Another suggestion would be that the contract with the holding company be renewed annually and a lump sum compensation for the ensuing year stated in the contract, which compensation might be based upon the percentage which is now set forth in said paragraph 15, as determined by the last year's earnings. I do not know that this criticism is really a serious one, but I am giving you the reaction which I had to a reading of the section.

Paragraph 16 on page 4 should be eliminated if the above generally stated objection is sound.

My criticism of paragraph (a) under the caption, "Non Par Value Capital Stock," on page 6, is simply to the use of the words, "territory served by your system." This identifies the holding company directly with the operating subsidiaries. Would it not be better to say "to the territory served by any of your operating subsidiaries."

In paragraph 22 on page 8 the only suggestion I have would be to eliminate the words in line 2, "or its operating subsidiaries."

I assume that this holding company contract will become virtually public property, either through the Federal Trade Commission investigation, or otherwise, and may in that way come to the potential notice at least of all local public utility commissions. It is for this reason that I think it quite important that the holding company contract should be divorced as completely as possible from the operating company contract so as to relate solely to the services rendered to the holding company, which do not involve the operating company in any way, and thus not become the subject of inquiry, explanation, or justification, in local investigation.

Very truly yours,

JOHN F. MACLANE,
Vice Pres. & General Counsel

JFM-O